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IN THE CIRCUIT COURT OF  
DALE COUNTY, ALABAMA

REGIONS BANK,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	NO. CV-04-251M
	)	
SUNSHINE CAMPING CENTER,	)	
INC., JON K. WILLIAMS,	)	
ET AL.,	)	
	)	
DEFENDANT.	)	

\* \* \* \* \*

The following is a transcript of the trial in  
the above case which was held May 1 - 4, 2006, at  
the Dale County Courthouse, Ozark, Alabama, before  
The Honorable Kenneth W. Quattlebaum.

A P P E A R A N C E S

FOR THE PLAINTIFF:

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HON. L. MERRILL SHIRLEY  
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FOR THE DEFENDANT JON K. WILLIAMS:

HON. WILLIAM B. MATTHEWS, JR.  
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: At this time the Court is  
3 going to call our final case for trial  
4 this week, which is Regions Bank versus  
5 Sunshine Camping Center, Incorporated, and  
6 Jon K. Williams. Is the plaintiff,  
7 Regions Bank, ready to proceed?

8 MR. SMITH: Plaintiff's ready, Your  
9 Honor.

10 THE COURT: Is the defendant Sunshine  
11 Camping Center ready to proceed?

12 MR. SHIRLEY: Ready, Your Honor.

13 THE COURT: And is defendant Jon  
14 Williams ready to proceed?

15 MR. MATTHEWS: Yes, sir.

16 THE COURT: All right. At this time  
17 I'll ask our circuit clerk,  
18 Ms. Bludsworth, to call the roll of the  
19 jurors.

20 (The roll was called.)

21 THE COURT: Okay. The case that the  
22 Court has called is a contracts case  
23 between the plaintiff, Regions Bank, and  
24 the two defendants. And out of this  
25 contract the plaintiff is making a claim

1           against the defendants based on several  
2           legal causes of action including fraud;  
3           negligence; wantonness; breach of  
4           contract; conversion; civil felony;  
5           conspiracy; wrongful hiring, training,  
6           and/or supervision; and wrongful  
7           entrustment.

8           I'm going to introduce the parties  
9           and the attorneys to you in a moment, but  
10          first there's questions that I will need  
11          to ask you touching on your qualifications  
12          to serve as jurors in this particular  
13          case. Of course, I'll ask that you be  
14          truthful and candid in your responses.  
15          None of us can be completely free of bias  
16          or prejudice in all phases of our lives  
17          and all issues that we have to decide, but  
18          we don't want those biases and prejudices  
19          to affect the outcome of this case and to  
20          interfere with your independent judgment  
21          in this case; therefore, it's imperative  
22          that you respond to all questions that are  
23          posed which apply to you. And your  
24          failure to correctly respond, even if it  
25          should be inadvertent, could result in the

1 case being mistried and our having to try  
2 the case again.

3 Now, as I mentioned, the plaintiff in  
4 the case is Regions Bank, and I'll ask the  
5 representative for Regions Bank or  
6 representative and the attorneys, John  
7 Smith and Lane Knight, if they would  
8 please stand.

9 MR. SMITH: And may it please the  
10 Court, this is Dale York. He's a  
11 representative of Regions Bank from  
12 Paducah, Kentucky.

13 THE COURT: All right. Thank you.  
14 And then for Sunshine Camping Center,  
15 attorney Merrill Shirley. And I'll let  
16 you introduce your client, Mr. Shirley.

17 MR. SHIRLEY: This is Comber Borland.

18 THE COURT: And then Mr. William B.  
19 Matthews, Jr., representing Jon Williams.

20 MR. MATTHEWS: This is Jon Williams.

21 THE COURT: Are any of you related by  
22 blood or marriage to any person that I  
23 just introduced to you?

24 JURORS: (No response.)

25 THE COURT: Do any of you know or

1 think you might know anything about this  
2 case?

3 JURORS: (No response.)

4 THE COURT: Do any of you have a  
5 particular interest in this case for any  
6 reason?

7 JURORS: (No response.)

8 THE COURT: Do any of you have a  
9 fixed opinion about this case or in  
10 general cases of this type?

11 JURORS: (No response.)

12 THE COURT: Do any of you have other  
13 business in court this week as a party or  
14 as a witness?

15 A JUROR: Restate that question,  
16 please.

17 THE COURT: Do any of you have any  
18 other business in court this week either  
19 as a party in a lawsuit or as a witness in  
20 a lawsuit?

21 JURORS: (No response.)

22 THE COURT: Do any of you have a  
23 business relationship with any party to  
24 this case? Okay.

25 A JUROR: (Inaudible)

1 (Reporter asked for  
2 clarification.)

3 THE COURT: All right. If you would,  
4 I guess we need to get each of you who  
5 believe that you have a business  
6 relationship with Regions Bank to stand at  
7 this time and give your name and just  
8 state your relationship with Regions Bank  
9 and I guess -- okay. If everybody will  
10 stand who has any kind of business  
11 relationship with Regions Bank. We're  
12 gonna start on my far left over here, and  
13 I'll ask you to give your name and your  
14 relationship with the bank.

15 MS. CARROLL: Judy Carroll. I'm an  
16 account holder there.

17 THE COURT: Okay. And that would be  
18 your only relationship, you're an account  
19 holder?

20 MS. CARROLL: Yes, sir.

21 MS. DOVER: Sandra Dover. And I bank  
22 with them one account and also my house is  
23 mortgaged with Regions Bank.

24 THE COURT: Okay.

25 MS. ENFINGER: My name is Robyn

1           Enfinger, and I have an account with  
2           Regions Bank.

3           THE COURT: You just have an account?

4           MS. ENFINGER: Checking.

5           THE COURT: Robyn Enfinger?

6           MS. ENFINGER: Yes, sir.

7           THE COURT: Okay. Thank you, ma'am.  
8           Okay. In the pink?

9           MS. STRAIN: Ann Strain. I have an  
10          account there.

11          THE COURT: All right. And in the  
12          back, sir?

13          MR. DENT: Jonathan Dent. I'm a  
14          personal friend of Comber Borland and done  
15          business with Sunshine Campers. I've  
16          bought two campers from them in the past.

17          THE COURT: All right. Thank you,  
18          sir. And your name, ma'am?

19          MS. COLE: Mary Cole. I have an  
20          account with Regions.

21          THE COURT: Okay. Excuse me, I'm  
22          sorry.

23          MS. KIRKLAND: Mr. Quattlebaum, I  
24          rented a camper from Sunshine RV in 2001  
25          and again in 2002.



1 THE COURT: Okay. If you'll state  
2 your name for the record.

3 MS. KIRKLAND: Debbie Kirkland.  
4 Debra Kirkland.

5 THE COURT: Okay, Ms. Kirkland.  
6 Okay. Hold on just a minute, now. Okay.  
7 We've got Mr. Dent and Ms. Kirkland who  
8 have stated business relationships with  
9 Sunshine Camping Center. Are there any  
10 others who feel like they might have a  
11 relationship, business relationship with  
12 Sunshine Camping Center? Okay.  
13 Ms. Enfinger, did you have something you  
14 wanted to say?

15 MS. ENFINGER: My husband went to  
16 school with Comber.

17 THE COURT: With Mr. --

18 MS. ENFINGER: My husband went to  
19 school with Comber Borland.

20 THE COURT: Okay. Mr. Borland? What  
21 is his name?

22 MS. ENFINGER: Jeff Enfinger.

23 THE COURT: Jeff Enfinger? All  
24 right. Is there anyone else who  
25 believes -- this is just about business

1 relationships, now. Is there anyone else  
2 who believes they might have a business  
3 relationship with any of the three parties  
4 in this case?

5 A JUROR: Talking about people  
6 involved or including attorneys, too?

7 THE COURT: No, I'm just talking  
8 about the parties: Regions Bank, Sunshine  
9 Camping Center, or Jon K. Williams. All  
10 right. At this time we will conduct our  
11 voir dire, and that will begin with the  
12 plaintiff, Mr. Smith.

13 (Voir Dire Examination by Mr.  
14 Smith.)

15 OBJECTION

16 MR. SHIRLEY: Your Honor, I'd like to  
17 object to that. Defendant is Sunshine  
18 Camping. Mr. Borland is a witness.

19 (Voir Dire Examination by Mr.  
20 Smith Continues.)

21 THE COURT: For Sunshine Camping?

22 MR. SHIRLEY: Yes, sir.

23 (Voir Dire Examination by Mr.  
24 Shirley.)

25 THE COURT: Mr. William Matthews.

1 (Voir Dire Examination by Mr.  
2 Matthews.)

3 THE COURT: Did you want to inquire  
4 of the jurors that want to speak in  
5 private?

6 MR. SMITH: If we could, Your Honor,  
7 please.

8 THE COURT: There were several of you  
9 who indicated that you wanted to give your  
10 responses in private. And I'll ask you if  
11 you will just to come on up at this time,  
12 and I'll allow Mr. Smith to ask you  
13 whatever questions he wants to ask you up  
14 here at the Bench. I believe it was in  
15 response to if you had ever been charged  
16 or a member of your family or a relative  
17 or close friend of a criminal offense.  
18 Yeah. If y'all will just stop right there  
19 at that table and sort of get in a line,  
20 and we'll just take you one at a time.  
21 The first lady there can come on up.

22 (Whereupon, the following was  
23 heard at the Bench out of the  
24 hearing of the venire.)

25 MR. SMITH: Ma'am, I'm sorry tell me

1                   your name again.

2                   MS. BUCKHALTER:   Etta Buckhalter.

3                   MR. SMITH:   Ms. Buckhalter.   What  
4                   was -- who and what was the nature of the  
5                   crime?

6                   MS. BUCKHALTER:   I have a theft of  
7                   property from '94.

8                   MR. SMITH:   Were you charged -- did  
9                   you actually go to trial on that?

10                  MS. BUCKHALTER:   No.   Set a \$500  
11                  fine.

12                  MR. SMITH:   3500?

13                  MS. BUCKHALTER:   \$500.

14                  MR. SMITH:   500.   Was that a  
15                  misdemeanor?

16                  MS. BUCKHALTER:   I'm not sure.

17                  MR. SMITH:   Do you remember the  
18                  amount of money that was supposedly taken?

19                  MS. BUCKHALTER:   No, I can't  
20                  remember.

21                  MR. SMITH:   Where was that?

22                  MS. BUCKHALTER:   Enterprise.

23                  MR. SMITH:   And did you plead guilty  
24                  to that or were you tried?

25                  MS. BUCKHALTER:   Yes, I pleaded

1 guilty.

2 MR. SMITH: Did you pay the money  
3 back to the person that you supposedly  
4 took it from?

5 MS. BUCKHALTER: All I had to pay was  
6 500.

7 MR. SMITH: Just 500, and that got it  
8 over?

9 MS. BUCKHALTER: Yes.

10 MR. SMITH: Would the fact you had  
11 that theft of property charge against you  
12 tend for you to believe one way or the  
13 other in this case?

14 MS. BUCKHALTER: No.

15 MR. SMITH: If I told you that the  
16 facts in this case would show that there  
17 had been a theft of property or something  
18 close to that in this case, would that  
19 tend to affect the way you decided this  
20 case?

21 MS. BUCKHALTER: No.

22 MR. SMITH: Okay. Thank you,  
23 Ms. Buckhalter.

24 THE COURT: If you other lawyers have  
25 a question --

1 MR. MATTHEWS: I do.

2 MS. BUCKHALTER: I'm sorry.

3 MR. SHIRLEY: No, I didn't have any.

4 THE COURT: All right. Thank you,  
5 ma'am, you may -- oh, excuse me.

6 MR. MATTHEWS: Was that case in city  
7 court?

8 MS. BUCKHALTER: Yes.

9 MR. MATTHEWS: Okay. That's all,  
10 Judge.

11 MS. BUCKHALTER: I think I've also  
12 had -- I think my mother may have had a  
13 case you may have done. Minnie  
14 Buckhalter? I'm not sure.

15 THE COURT: Next.

16 MS. HUNTER: I believe the question  
17 was ever been arrested or --

18 MR. SMITH: Yes, you or a family  
19 member ever been charged.

20 MS. HUNTER: Myself.

21 MR. SMITH: All right. And tell me  
22 your name again, please.

23 MS. HUNTER: Heavenly Hunter.

24 MR. SMITH: Ms. Hunter, I knew that,  
25 I'm sorry. What was the nature of the

1 charge against you?

2 MS. HUNTER: Animal cruelty.

3 MR. SMITH: Where was that?

4 MS. HUNTER: Daleville.

5 MR. SMITH: And what was the result  
6 of that?

7 MS. HUNTER: Pled youthful offender.

8 MR. SMITH: How long ago was that?

9 MS. HUNTER: Five years ago.

10 MR. SMITH: I was about to say, can't  
11 be that long, because you're not that old.  
12 Okay.

13 MS. HUNTER: Same day I started at  
14 the police department. It was a mess.

15 MR. SMITH: Thank you, Ms. Hunter.  
16 That's all. These lawyers may have a  
17 question.

18 MR. MATTHEWS: I don't.

19 MR. SHIRLEY: No questions.

20 MR. SMITH: Yes, ma'am, if you could  
21 tell us your name, please.

22 MS. BORAH: Linda Borah.

23 MR. SMITH: All right. Ms. Borah, I  
24 got you confused with somebody else?

25 MS. BORAH: That's okay.

1 MR. SMITH: I'm sorry. And what is  
2 it that you can tell us in response to  
3 that question?

4 MS. BORAH: My son.

5 MR. SMITH: Your son? What type of  
6 charge was made?

7 MS. BORAH: He served seven years for  
8 kidnapping.

9 MR. SMITH: Where was that?

10 MS. BORAH: Where was the court or  
11 where --

12 MR. SMITH: Yes, ma'am.

13 MS. BORAH: Houston County.

14 MR. SMITH: In Houston County? And  
15 were there any charges other than  
16 kidnapping?

17 MS. BORAH: There was some made but  
18 they were dropped. That's the only one  
19 that he served time for.

20 MR. SMITH: Did he actually go to  
21 trial or plead guilty?

22 MS. BORAH: He went to trial. He had  
23 two hung juries and then the third jury --

24 MR. SMITH: Would that experience  
25 with your son, would that affect you in



1 deciding this case at all?

2 MS. BORAH: No.

3 MR. SMITH: All right. That's all  
4 the questions I have.

5 MR. MATTHEWS: I don't have any.

6 MS. BORAH: Okay.

7 THE COURT: Next.

8 MS. STRAIN: Strain.

9 MR. SMITH: Ms. Strain? And what  
10 information can you tell us that was  
11 responsive to that question?

12 MS. STRAIN: My husband, DUI. My  
13 husband, DUI.

14 MR. SMITH: Was that just a one DUI?

15 MS. STRAIN: (Indicated in the  
16 negative by a shake of the head.)

17 MR. SMITH: He had some others as  
18 well?

19 MS. STRAIN: Yes.

20 MR. SMITH: Did he ever have to do  
21 any -- was he ever convicted of a felony  
22 DUI statute?

23 MS. STRAIN: He served time in jail.

24 MR. SMITH: Do you have a judgment as  
25 to how many DUI's he's had?

1 MS. STRAIN: Three.

2 MR. SMITH: Okay. Would the fact  
3 that your husband has had DUI's affect  
4 your ability to be fair in this case?

5 MS. STRAIN: No.

6 MR. SMITH: Okay. Thank you.

7 MR. SHIRLEY: How many did she say?

8 MR. SMITH: Said he had three.

9 MR. SHIRLEY: Three? I couldn't hear  
10 her.

11 MS. DOVER: Hi, I'm Sandra Dover, and  
12 my brother was arrested and went to prison  
13 for domestic violence and drugs.

14 MR. SMITH: Where was that?

15 MS. DOVER: That was in Phenix City,  
16 Alabama. And I also went bankrupt myself  
17 because I signed for the church, which was  
18 \$200,000.

19 MR. SMITH: Okay. Would the fact  
20 that you've had that experience --

21 MS. DOVER: No.

22 MR. SMITH: -- cause you to be --

23 MS. DOVER: No.

24 MR. SMITH: -- think one way or the  
25 other in this case?

1 MS. DOVER: No, no, no.

2 MR. SMITH: Ms. Dover, thank you.

3 These lawyers may have a question.

4 MR. MATTHEWS: I don't have any.

5 MR. SHIRLEY: No thank you, I don't.

6 MS. STARLING: Good afternoon.

7 MR. SMITH: Good afternoon. Could  
8 you tell us your name, please?

9 MS. STARLING: I'm Loretta Starling.

10 MR. SMITH: And, Ms. Starling, what  
11 information do you have for us?

12 MS. STARLING: Well, my son, he got  
13 in trouble when he was 17. And he was  
14 guilty and he knowed it. And then April  
15 the 3rd of 2000, he got arrested on a drug  
16 charge. He's currently on probation for  
17 that.

18 MR. SMITH: And where were the  
19 charges when he was 17?

20 MS. STARLING: Here in Ozark.

21 MR. SMITH: And what were they?

22 MS. STARLING: Rape or --

23 MR. SMITH: Statutory rape?

24 MS. STARLING: Yeah.

25 MR. SMITH: Supposedly had sex with

1 someone who was underage?

2 MS. STARLING: Yeah.

3 MR. SMITH: And he's currently got  
4 drug charges on probation?

5 MS. STARLING: Right, right.

6 MR. SMITH: The fact that he has  
7 those charges or had that experience,  
8 would that affect your ability to decide  
9 this case?

10 MS. STARLING: No, sir.

11 MR. SMITH: Okay. Thank you.

12 MR. MATTHEWS: Is your son Greg  
13 Starling?

14 MS. STARLING: No, that's my  
15 brother-in-law.

16 MR. MATTHEWS: Brother-in-law, okay.

17 MS. STARLING: Yeah.

18 MR. MATTHEWS: Okay.

19 MS. STARLING: That it?

20 MR. MATTHEWS: Yeah.

21 MR. SMITH: Yes, ma'am. And, yes,  
22 ma'am, could you tell us your name?

23 A JUROR: (Inaudible)

24 THE REPORTER: Would you say that  
25 again?

1 MS. KILO: Eatrice Kilo. One L.

2 MR. SMITH: One L, thank you. Fix  
3 that. And what information do you have  
4 for us, Ms. Kilo?

5 MS. KILO: My uncle's incarcerated.

6 MR. SMITH: What is he in jail for?

7 MS. KILO: For rape.

8 MR. SMITH: And is that here in  
9 Alabama?

10 MS. KILO: Huh-uh, Florida.

11 MR. SMITH: Florida? How long a  
12 sentence does he have, if you know?

13 MS. KILO: Twenty-five to life.

14 MR. SMITH: And the fact that he  
15 has -- he's currently in jail in Florida,  
16 would that affect your ability to sit and  
17 be fair in this case?

18 MS. KILO: No.

19 MR. SMITH: Did your uncle plead  
20 guilty to the charge against him or was he  
21 tried, do you know?

22 MS. KILO: He was tried.

23 MR. SMITH: Tried and found guilty?

24 MS. KILO: Uh-huh.

25 MR. SMITH: Okay. Thank you, ma'am.

1 MR. MATTHEWS: No questions.

2 MR. SHIRLEY: No questions.

3 MR. SMITH: Yes, sir. How do you do?

4 MR. TYLER: I'm doing good.

5 MR. SMITH: If you could tell us your  
6 name, please.

7 MR. TYLER: My name is Terry Tyler.

8 MR. SMITH: All right, Mr. Tyler.

9 MR. MATTHEWS: Tyler?

10 MR. TYLER: Tyler, T-Y-L-E-R.

11 MR. SMITH: And what information do  
12 you have for us today?

13 MR. TYLER: Well, my son, you asked  
14 about that.

15 MR. SMITH: Yes, sir.

16 MR. TYLER: My son's got an ongoing  
17 case right now.

18 MR. SMITH: Here in Ozark?

19 MR. TYLER: Yes.

20 MR. SMITH: And what kind of case is  
21 it?

22 MR. TYLER: It's criminal. He broke  
23 into a store.

24 MR. SMITH: Charged with theft or --

25 MR. TYLER: Breaking and entering and

1 theft.

2 MR. SMITH: And is that in city court  
3 or is it in district court or circuit  
4 court or do you know?

5 MR. TYLER: I don't know.

6 MR. SMITH: But it's going on now?

7 MR. TYLER: Yes.

8 MR. SMITH: Was he indicted by the  
9 grand jury?

10 MR. TYLER: No.

11 MR. SMITH: Would the fact that your  
12 son is under indictment for breaking and  
13 entering or theft or whatever that is,  
14 would that affect your ability to be fair  
15 in this case?

16 MR. TYLER: No.

17 MR. SMITH: Thank you, Mr. Tyler.  
18 How you doing, sir? What is your name,  
19 please?

20 MR. RIVERS: Charles Rivers.

21 MR. SMITH: Mr. Rivers. And what  
22 information do you have for us today?

23 MR. RIVERS: Well, I have several  
24 relatives that's been incarcerated, three  
25 siblings.

1 MR. SMITH: Let me ask you this.  
2 Were any of the charges against them theft  
3 where they'd supposedly taken something  
4 from somebody?

5 MR. RIVERS: (Inaudible)

6 THE REPORTER: I didn't hear what you  
7 said.

8 MR. RIVERS: One sibling.

9 MR. SMITH: And what was the nature  
10 of the charge? What was he supposed to  
11 have taken?

12 MR. RIVERS: I really don't have any  
13 information. I just know he was  
14 incarcerated.

15 MR. SMITH: Is he in jail at this  
16 time?

17 MR. RIVERS: Yes, he is.

18 MR. SMITH: Where is he in jail, here  
19 in Alabama?

20 MR. RIVERS: In Florida.

21 MR. SMITH: In Florida?

22 MR. RIVERS: Yes, Florida.

23 MR. SMITH: And just real quickly,  
24 your other two siblings, what kind of  
25 charges against them?



1 MR. RIVERS: One was a drug charge  
2 and one was attempted murder.

3 MR. SMITH: And are both of them  
4 still in jail or they both --

5 MR. RIVERS: Yes.

6 MR. SMITH: They're still in jail?

7 MR. RIVERS: Still incarcerated.

8 MR. SMITH: Florida or another state?

9 MR. RIVERS: I really don't know.

10 MR. SMITH: The fact that your three  
11 brothers have had these experiences, would  
12 that affect your ability to be fair in  
13 this case?

14 MR. RIVERS: No, sir. My youngest  
15 siblings from two marriages, and I'm fifty  
16 years old. We're separated.

17 MR. SMITH: I understand. They're  
18 your brothers but you're not real close to  
19 them?

20 MR. RIVERS: No.

21 MR. SMITH: Okay. Mr. Rivers, thank  
22 you. Yes, ma'am, could you tell us your  
23 name?

24 MS. DICK-GRACE: Janet Dick-Grace.

25 MR. SMITH: Yes, I should have known

1                   that. And what information do you have  
2                   for us?

3                   MS. DICK-GRACE: My cousin was  
4                   arrested for writing bad checks twice.  
5                   She was in the Dale County jail one time,  
6                   and my mother went and paid and got her  
7                   out. And then she was in a jail in New  
8                   Brockton for writing bad checks, and my  
9                   mother went and paid and got her out of  
10                  that, too.

11                 MR. SMITH: And your mother would be  
12                 her aunt?

13                 MS. DICK-GRACE: Uh-huh, uh-huh.

14                 MR. SMITH: And the fact that your  
15                 cousin had had -- well, let me ask you  
16                 this. Were the checks bad checks?

17                 MS. DICK-GRACE: What do you mean?

18                 MR. SMITH: As far as you know, I  
19                 mean, it wasn't a situation where there  
20                 was some confusion? Were they really bad  
21                 checks?

22                 MS. DICK-GRACE: I think they were  
23                 bad checks.

24                 MR. SMITH: Bad checks. And the fact  
25                 that your cousin has had that experience,

1                   would that affect your ability to be fair  
2                   in this case?

3                   MS. DICK-GRACE: No. I don't believe  
4                   in writing bad checks.

5                   MR. SMITH: Sure. Did your cousin  
6                   pay those bad checks? Or your mother --

7                   MS. DICK-GRACE: No, my mother did.

8                   MR. SMITH: Your mother?

9                   MS. DICK-GRACE: My mother did. And  
10                  then my mother had her paint her beach  
11                  house.

12                  MR. SMITH: She got a little labor  
13                  out of it?

14                  MS. DICK-GRACE: Yeah.

15                  MR. SMITH: Okay. Thank you,  
16                  Ms. Dick-Grace.

17                  MR. SHIRLEY: No questions, thank  
18                  you.

19                  MR. SMITH: Good afternoon. And your  
20                  name, please, ma'am?

21                  MS. COLE: Mary Cole.

22                  MR. SMITH: Ms. Cole. And what  
23                  information do you have for us today?

24                  MS. COLE: My niece. Want her name?

25                  MR. SMITH: Well, no, ma'am. What

1 problem has she had?

2 MS. COLE: Theft, theft.

3 MR. SMITH: Where was that?

4 MS. COLE: In Enterprise.

5 MR. SMITH: And you say she's your  
6 niece? Is she someone that you're close  
7 to?

8 MS. COLE: My brother's -- yes --  
9 daughter, yes.

10 MR. SMITH: Did she serve any time in  
11 jail for that?

12 MS. COLE: She's still serving time.

13 MR. SMITH: Did she plead guilty to  
14 the charge against her or was she tried  
15 and convicted?

16 MS. COLE: Uh-huh.

17 MR. SMITH: She was tried? Would the  
18 fact that your niece was convicted of this  
19 theft charge, would that affect your  
20 ability to be fair in this case?

21 MS. COLE: No, it wouldn't.

22 MR. SMITH: Thank you so much,  
23 Ms. Cole. Yes, sir. Could you tell us  
24 your name again, please?

25 MR. PATTERSON: James W. Patterson.

1 MR. SMITH: All right, Mr. Patterson,  
2 and what information do you have for us  
3 today?

4 MR. PATTERSON: About where you asked  
5 the questions if you've ever been arrested  
6 or anything.

7 MR. SMITH: Yes, sir.

8 MR. PATTERSON: I have. And I was  
9 charged with two felony charges, and they  
10 broke it down to misdemeanor third degree.

11 MR. SMITH: Got a guilty plea -- I  
12 mean, excuse me, a plea deal or something  
13 like that?

14 MR. PATTERSON: Yes, sir.

15 MR. SMITH: What were those felony  
16 charges?

17 MR. PATTERSON: Breaking and  
18 entering.

19 MR. SMITH: How old were you when  
20 that happened?

21 MR. PATTERSON: I was in my twenties,  
22 probably about 26.

23 MR. SMITH: Where was that?

24 MR. PATTERSON: In Daleville.

25 MR. SMITH: Did you serve any jail

1 time for that?

2 MR. PATTERSON: Stayed three days,  
3 two-and-a-half days.

4 MR. SMITH: When they arrested you?

5 MR. PATTERSON: Right.

6 MR. SMITH: Okay. The fact that you  
7 had that experience when you were in your  
8 mid twenties, would that affect your  
9 ability to be fair in this case?

10 MR. PATTERSON: No, sir.

11 MR. SMITH: Thank you, Mr. Patterson.

12 MS. PAYNE: I'm Virginia Payne.

13 MR. SMITH: Ms. Payne?

14 MS. PAYNE: Uh-huh. And this  
15 happened forty years ago.

16 MR. SMITH: Okay.

17 MS. PAYNE: But my brother is a  
18 junior, and he mortgaged property that my  
19 daddy owned.

20 MR. SMITH: Uh-huh.

21 MS. PAYNE: And went to court.

22 MR. SMITH: What came of that?

23 MS. PAYNE: He had to pay the money  
24 back. He paid the money back. He never  
25 served time or anything, but it was -- the

1                   loan was fraudulently, and my daddy had an  
2                   excellent name and it was --

3                   MR. SMITH: Was that here in Ozark?

4                   MS. PAYNE: Uh-huh, in Ozark.

5                   MR. SMITH: And would the fact that  
6                   your brother and your family, I guess,  
7                   went through that experience, would that  
8                   affect your ability in this case?

9                   MS. PAYNE: No.

10                  MR. SMITH: But your brother --

11                  MS. PAYNE: I just wanted -- I wanted  
12                  to -- I didn't feel right by not saying,  
13                  not telling.

14                  MR. SMITH: We appreciate that.

15                  MS. PAYNE: And my brother did pay it  
16                  back, all of it back.

17                  MR. SMITH: All right. Thank you,  
18                  Ms. Payne. Ms. Kirkland?

19                  MS. KIRKLAND: Okay. My sister -- my  
20                  sister's daughter has been in criminal --  
21                  in court, but what I don't know for. I  
22                  just know she's a drug addict. Her  
23                  children have been taken away from her and  
24                  my sister's raising them and I don't know  
25                  a whole lot of details. And that was

1 in -- I think she was in Birmingham but --

2 MR. SMITH: The fact that your niece  
3 has had this experience --

4 MS. KIRKLAND: No.

5 MR. SMITH: -- would that be -- that  
6 affect your --

7 MS. KIRKLAND: No, I just didn't want  
8 to leave it out.

9 MR. SMITH: Well, thank you. Thank  
10 you so much for telling us. Thank you,  
11 Your Honor.

12 THE COURT: Ladies and gentlemen, I  
13 anticipate it'll take approximately 45  
14 minutes for us to strike a jury, and so  
15 I'm going to -- the court will stand in  
16 recess until 15 minutes till four. You'll  
17 be free to get up and go to the restroom  
18 if you want to or perhaps even step  
19 outside. But if you'll be back in the  
20 courtroom here in the courtroom at 15  
21 minutes till four, we will resume with the  
22 trial.

23 (Pause in the Proceedings.)

24 (Whereupon, counsel conferred at  
25 the Bench out of the hearing of



1 the venire.)

2 MR. SMITH: Your Honor, we have a  
3 challenge for cause as to juror Dent who  
4 was close friends with Mr. Borland. I  
5 understand that Mr. Borland is not the  
6 corporation but he is the president of the  
7 corporation. He is the sole officer of  
8 the corporation. Mr. Dent testified that  
9 he just couldn't sit in this case. He did  
10 not want to be tested in this case. And I  
11 think by all appearances, everything that  
12 he said in total would indicate that he  
13 could not be fair. He could not consider  
14 Mr. Borland's testimony -- he would give  
15 Mr. Borland's testimony more weight than  
16 he would give the testimony of any other  
17 witness. And for that reason we would  
18 challenge him for cause.

19 THE COURT: All right, sir.

20 MR. SHIRLEY: We respectfully object.  
21 We will accept him.

22 THE COURT: I want to give y'all all  
23 an opportunity to get on the record.

24 MR. MATTHEWS: We'd ask he be  
25 stricken, Judge. I don't think he could

1 be fair.

2 THE COURT: I'm gonna grant the  
3 challenge.

4 MR. SMITH: Judge, we would also have  
5 a challenge for juror Deal. He's the  
6 insurance adjustor who's worked closely  
7 with Mr. Shirley.

8 THE COURT: That will be denied.

9 MR. SMITH: Thank you, Your Honor.

10 (Break in the proceedings.)

11 (The following was heard in open  
12 court.)

13 THE COURT: Okay. If you'll please  
14 have a seat here in the jury box as your  
15 name is called.

16 (Jury seated in the box.)

17 THE COURT: Okay. This will be,  
18 then, the jury that tries the case of  
19 Regions Bank versus Sunshine Camping  
20 Center, Incorporated, and Jon Williams.  
21 The rest of you get to go home.

22 (Venire dismissed.)

23 THE COURT: Are there any matters  
24 that we need to address before we get  
25 started?

1 MR. SHIRLEY: May I?

2 (Discussion off the record.)

3 THE COURT: Ladies and gentlemen of  
4 the jury, we have a few matters that need  
5 to be taken care of in preparation for the  
6 trial of the case, hopefully make it go a  
7 little more smoothly, and we'll be able to  
8 conclude it a little bit faster by doing  
9 so. I'm going to, before we adjourn for  
10 the evening, though, give you a brief  
11 charge on your conduct during the trial.  
12 Of course, you don't really know a lot  
13 about or any about the facts of this case  
14 as of yet, but you do know who the parties  
15 are and you know the nature of the case.  
16 So I feel like it would be a good idea to  
17 go ahead and give these instructions to  
18 you before we take the evening recess.  
19 And these instructions will apply for the  
20 entire trial of the case.

21 Until the case is submitted to you  
22 for your deliberations, you must not  
23 discuss the case with anyone, nor permit  
24 anyone to discuss the case with you in  
25 your hearing or in your hearing. You are

1 to keep an open mind and you shall neither  
2 discuss nor decide any issue in this case  
3 among yourselves until the case is  
4 submitted to you for your deliberations  
5 under the instructions of the Court. If  
6 members of your family or friends or  
7 anyone else should ask you about the case,  
8 you should tell them that you are under  
9 the Court's instruction not to discuss it.  
10 When the trial is over and your verdict is  
11 rendered, you will then be released from  
12 this instruction and you will then be free  
13 to discuss the case and your experiences  
14 as a juror to whatever extent you desire.

15 The attorneys, parties, and witnesses  
16 are not permitted to talk to you during  
17 the course of the trial. Even a  
18 discussion which has no relation to the  
19 case might give a bad appearance, so we  
20 need to avoid that. If the participants  
21 in the trial fail to greet you or converse  
22 with you during this trial, it will be due  
23 to this rule.

24 So with that I will excuse you for  
25 the evening and ask you to be back here in

1 the jury room. And the jury room is at  
2 the far end of this hall. I'll ask the  
3 bailiff -- when I excuse you, if you'll  
4 just come out this door, he'll show you  
5 the jury room. It'll be the last jury  
6 room on the left at the end of the hall  
7 there. Be back there in the morning at  
8 8:30. Is 8:30 an inconvenience, a serious  
9 inconvenience for any of you in the  
10 morning? Okay. If not, then, I'll ask  
11 you to be in that jury room at 8:30 in the  
12 morning, and we'll try to get started very  
13 soon thereafter. So if you will, you may  
14 step out with the bailiff at this time and  
15 he'll show you out this door right here.

16 (The jury left the courtroom.)

17 THE COURT: Okay. We'll see everyone  
18 back in the morning at 8:30.

19 (The following was heard May 2,  
20 2006.)

21 THE COURT: Okay. I understand there  
22 may be something y'all want to put on the  
23 record before we begin.

24 MR. SMITH: Yes, sir, I did. We  
25 had -- you had heard argument yesterday on

1 the consolidation for the trial with this  
2 case CV04-251-M, a claim for  
3 indemnification in case number 04-296-M.  
4 And defendant Sunshine objected to that  
5 consolidation for trial, Your Honor, and  
6 Your Honor sustained that objection. And  
7 we simply wanted to make sure that those  
8 facts were recited into the record.

9 THE COURT: All right.

10 MR. SMITH: And further, Your Honor,  
11 because of that we would ask -- because of  
12 that ruling from the Court we would ask  
13 for the Court to enter an order in limine  
14 to keep the defendants in this case from  
15 discussing the facts of Regions being sued  
16 in the McAllister lawsuit or Regions  
17 paying any money toward settlement in the  
18 McAllister lawsuit. The McAllister  
19 lawsuit being CV04-296-M.

20 THE COURT: Okay. Response?

21 MR. SHIRLEY: Well, the response is  
22 that insofar as the McAllister case, the  
23 296 case being joined in this case,  
24 Sunshine Camping had no notice. There's  
25 been no order entered that they were to be

1 consolidated for trial purposes. I  
2 believe that was the foundation for the  
3 Court making such a ruling. Any kind of  
4 order about motion in limine relative to  
5 that point would not be well taken at this  
6 time if, in fact, they intend to make  
7 Mr. McAllister personally as a witness  
8 would be one ground, one basis. On behalf  
9 of Sunshine we would submit to the Court  
10 that we have the right and the privilege  
11 that to show bias, prejudice, interest,  
12 motivation for not telling it exactly like  
13 the witness may portray it on direct  
14 examination and to exclude the mention or  
15 the reference to that unduly limits the  
16 opportunity for evidence. The  
17 plaintiff -- if the plaintiff calls him as  
18 a witness, he can limit his testimony by  
19 his examination, which would obviate the  
20 need of any kind of order in motion in  
21 limine.

22 MR. SMITH: Your Honor, we --

23 THE COURT: Before you respond I  
24 think I need a little background on the  
25 McAllister case.

1 MR. SMITH: Yes, sir, Your Honor.

2 THE COURT: If you can tell me a  
3 little bit about that and how it relates  
4 to this case.

5 MR. SMITH: McAllister -- after  
6 Regions, or Union Planters at the time,  
7 sued Sunshine and Mr. Williams, about  
8 three months or so -- my memory is a  
9 little vague on that, after that lawsuit  
10 was filed Mr. McAllister -- who was one of  
11 the individuals whose identity was used to  
12 obtain monies from Regions by the  
13 defendants in this case -- filed a lawsuit  
14 against Regions, Sunshine, and Mr.  
15 Williams, and I think Mr. Borland as well.  
16 That lawsuit settled in mediation back in  
17 September.

18 Now, as part of that lawsuit, before  
19 the mediation Regions asserted a claim for  
20 indemnification and other claims against  
21 Sunshine, not Mr. Borland but just  
22 Sunshine and Mr. Williams. We asserted  
23 that claim for indemnification. It was  
24 our belief because of the status  
25 conference that was held several months



1                   ago, both of the cases were on the status  
2                   docket, we, Regions, announced ready for  
3                   trial. No one was present for Sunshine  
4                   there. It was our belief that both cases  
5                   were on this docket, both cases, both this  
6                   case and the McAllister case had been  
7                   consolidated for discovery. We see no  
8                   reason why they should not be consolidated  
9                   for trial; however, you heard yesterday  
10                  Sunshine's objection, and the Court  
11                  sustained that objection and did not  
12                  consolidate the cases for trial. But  
13                  because of that, Your Honor, we have a  
14                  separate claim for indemnification in the  
15                  McAllister lawsuit relating to Sunshine's  
16                  attorneys fees that it had to pay in  
17                  defending the McAllister lawsuit and for  
18                  the monies that it paid Mr. McAllister  
19                  toward settlement in that lawsuit. And  
20                  those monies are \$10,000.

21                  THE COURT: Wait a minute. Regions  
22                  has a claim for indemnification?

23                  MR. SMITH: Yes, sir.

24                  THE COURT: Okay. For what it paid  
25                  to McAllister?

1 MR. SMITH: Yes, sir, against  
2 Sunshine and Mr. Williams. Because under  
3 the terms of both the dealer agreement and  
4 the retail installment contract and  
5 security agreement that was assigned  
6 Sunshine, the corporation, says in effect  
7 that we, Sunshine, take responsibility for  
8 any losses that Regions may incur because  
9 of our wrongdoing in assigning  
10 unenforceable contracts. And other  
11 than -- I mean, the scope is broader than  
12 that, at least that's our position in this  
13 case.

14 THE COURT: Now, tell me why that  
15 should be kept out of this case.

16 MR. SMITH: Because the two cases  
17 aren't consolidated for trial, Your Honor,  
18 its indemnification claim and this claim,  
19 what Regions may have paid in attorneys  
20 fees in Mr. McAllister's case and what  
21 Regions paid as indemnification or paid to  
22 Mr. McAllister to settle is simply  
23 irrelevant and immaterial to the issues to  
24 be tried in this lawsuit. And those  
25 issues are whether Regions was defrauded

1 by -- and there are other cause of action  
2 but I just cached (sic) it as fraud -- was  
3 defrauded by Sunshine in assigning these  
4 three contracts, in particular the  
5 McAllister contract. Doesn't have  
6 anything to do -- the damages are to be  
7 tried in that other lawsuit. The claim  
8 for indemnification is a separate issue  
9 from what may have happened with this  
10 contract in this lawsuit and the monies  
11 that were paid for that contract. The  
12 fact that we, Regions, had to defend a  
13 lawsuit that was filed against us and pay  
14 monies to settle that lawsuit is another  
15 issue to be tried in another case, and  
16 it's not relevant to this case.

17 THE COURT: Now, tell me again why it  
18 ought to be allowed.

19 MR. SHIRLEY: One of the primary  
20 issues of any witness that takes the stand  
21 is whether or not their testimony is  
22 biased, prejudiced, has a financial  
23 interest in the outcome, did they assert a  
24 financial interest. And if the way I  
25 understand what he's asking for is that

1           that case is not ever supposed to be  
2           mentioned. And I submit that that's two  
3           broad a request for motion in limine at  
4           this juncture in this trial. There's not  
5           any testimony that he's proffering that's  
6           supposed to be offered. There's not any  
7           testimony that is designated as being this  
8           is all that McAllister is gonna say and do  
9           and therefore you shouldn't get into all  
10          of this. And that's the problem, the  
11          first problem with it.

12                 The second problem with it is I think  
13           he told you, he's telling you it's a  
14           separate issue and it's a separate thing  
15           for trial purposes, but it ain't gonna be  
16           evidence if he doesn't make the wrong  
17           suggestion of testimony on direct  
18           examination.

19                 MR. SMITH: Your Honor, if that's the  
20           point, we don't intend to get into Mr.  
21           McAllister with his lawsuit against  
22           Regions. That's not our intent at all.  
23           We're gonna put him on the stand if  
24           necessary to, I guess, not identify the  
25           documents that supposedly had his

1 signature on them. But what I wanted to  
2 avoid, Your Honor, is the defense in this  
3 case coming up and going into Mr. -- with  
4 Mr. McAllister the fact of his lawsuit and  
5 any monies that Regions may have paid,  
6 because that is a separate issue, based on  
7 their objection, to be tried in another  
8 lawsuit.

9 THE COURT: And you're saying that  
10 ought to be allowed to show possible  
11 prejudice or bias on his part as a  
12 witness --

13 MR. SHIRLEY: Yes, sir. Yes, sir.

14 THE COURT: -- for Regions?

15 MR. SHIRLEY: Yes, sir.

16 THE COURT: I'm gonna deny your  
17 motion at this time. Of course, you're  
18 free to raise it later on during the trial  
19 of the case. I'll just have to consider  
20 it during the context of the trial.

21 MR. SMITH: Okay.

22 THE COURT: Okay. Anything further,  
23 then, before we bring the jury in?

24 MR. SMITH: Not from Regions, Your  
25 Honor.

1 MR. MATTHEWS: No, sir.

2 MR. SHIRLEY: No, Your Honor.

3 (The jury entered the  
4 courtroom.)

5 THE COURT: Good morning, ladies and  
6 gentlemen.

7 JURORS: Good morning.

8 THE COURT: Before we begin with the  
9 trial of this case I think it may be  
10 helpful for you to have an understanding  
11 of the procedure that we'll be following  
12 throughout the course of the trial. And  
13 as you are aware, this is a civil case,  
14 and the procedure that we will follow will  
15 begin with opening statements. First,  
16 counsel for the plaintiff Regions Bank  
17 will make an opening statement of their  
18 case, and then counsel for the defendants  
19 will be given an opportunity to respond  
20 with a statement of their defenses. Each  
21 side will be confined to an outline of the  
22 case and a statement of what they expect  
23 the evidence to show. These statements  
24 are not evidence but are given simply to  
25 familiarize you with the case so it will

1 be easier for you to follow it when the  
2 evidence is presented.

3 Following the opening statements,  
4 evidence will be presented by witnesses  
5 and perhaps by various exhibits. In  
6 receiving evidence you should bear in mind  
7 that as officers of the court attorneys  
8 have a duty to present evidence in behalf  
9 of the parties that they represent, to  
10 make such objections as they deem proper,  
11 and to fully argue their party's cause.  
12 An attorneys statements, again, are not  
13 evidence but are to help you understand  
14 the evidence and to apply the law;  
15 therefore, you should consider in your  
16 verdict only statements that are supported  
17 by the evidence and by the law as given  
18 you by the Court. Likewise, statements  
19 made by the Court are not evidence and  
20 should not be considered by you as such.

21 During this trial I will rule on  
22 objections by counsel as to the  
23 admissibility of testimony and other  
24 evidence. You should not concern yourself  
25 with the reasons for my rulings since they

1 are controlled and required by rules of  
2 law. You shouldn't speculate as to  
3 possible answers to questions which I do  
4 not require to be answered. Additionally  
5 the overruling of objections to evidence  
6 is not intended to indicate the weight to  
7 be given such evidence by you.

8 Occasionally during the course of the  
9 proceedings it may become necessary for me  
10 to confer with the attorneys outside your  
11 presence or outside your hearing. Should  
12 I call counsel to the Bench or excuse you  
13 from the courtroom it will be to resolve a  
14 legal point or other matter which at that  
15 point might not be proper for you to hear  
16 and consider. You should not speculate on  
17 the content of any such conference, nor  
18 allow the conference or any inference you  
19 might draw to affect your verdict.

20 Following the close of the evidence  
21 in the case counsel will again be allowed  
22 to address you in closing arguments. In  
23 the arguments they will discuss the  
24 evidence and all reasonable inferences to  
25 be drawn therefrom to help guide you to a



1 true and just verdict. Again, counsel for  
2 the plaintiff will open the arguments, the  
3 defendants will be allowed to respond, and  
4 then the plaintiff will be given an  
5 opportunity to close.

6 At the close of the arguments the  
7 Court will state to you the applicable  
8 rules to guide you in arriving at your  
9 verdict. Upon retiring to the jury room  
10 to consider your verdict you will elect  
11 one of your number as foreperson to  
12 moderate your discussion and to sign and  
13 return to the Court the verdict arrived at  
14 by you.

15 When a judge and jury sit together as  
16 a court of law it is the duty of the judge  
17 to see that the trial progresses in an  
18 orderly fashion, to rule upon legal  
19 matters that are presented, to define the  
20 issues involved, and to instruct the jury  
21 as to the law applicable to the case. It  
22 is your duty as jurors to follow the law  
23 as so stated to you by the Court. You  
24 will therefore render a verdict in  
25 accordance with the facts as you determine



1 take into consideration any matter in  
2 which you would in your everyday affairs  
3 in passing upon the truthfulness and  
4 accuracy of the testimony. Weigh the  
5 testimony in the light of your common  
6 observation and experience and reach a  
7 verdict that will be based upon the truth  
8 as you determine it from all of the  
9 evidence.

10 With that we will begin with opening  
11 statements from the plaintiff.

12 MR. SMITH: May it please the Court,  
13 defense counsel.

14 (Opening Statements by Mr.  
15 Smith.)

16 THE COURT: Mr. Shirley.

17 MR. SHIRLEY: Thank you, Your Honor.

18 (Opening Statements by Mr.  
19 Shirley.)

20 THE COURT: Mr. Matthews.

21 MR. MATTHEWS: We waive opening,  
22 Judge.

23 THE COURT: All right. You may call  
24 your first witness.

25 MR. SMITH: Your Honor, may we have a

1 moment to arrange some things?

2 THE COURT: Yes, sir. Ladies and  
3 gentlemen of the jury, I will tell you  
4 while they're doing this that I normally  
5 go about an hour and a half and then we'll  
6 take a break. But if anybody has an  
7 emergency, if you'll waive your hand at me  
8 then I'll call for a recess and we'll take  
9 a little break sooner than that. I'm  
10 usually looking around the courtroom for  
11 those kind of things so -- and  
12 sometimes -- I try to find a good breaking  
13 point, so it may be a little bit longer  
14 than an hour and a half at times, but  
15 that's the schedule we'll try to follow.  
16 And I will need you gentlemen to move this  
17 easel over here --

18 MR. SMITH: I'm sorry, Judge.

19 THE COURT: -- so those jurors can  
20 see the witness stand and see the Court.

21 (Pause in the Proceedings.)

22 MR. SMITH: Thank you, Your Honor,  
23 ladies and gentlemen. We call Jon  
24 Williams.

25 MR. SHIRLEY: Am I gonna interfere

1 with anybody if I move over to the  
2 chalkboard?

3 MR. SMITH: I don't have any  
4 objection, Your Honor.

5 THE COURT: Okay.

6 JON K. WILLIAMS  
7 having been first duly sworn or affirmed, was  
8 examined and testified as follows, to-wit:

9 DIRECT EXAMINATION

10 BY MR. SMITH:

11 Q You are Jon Williams?

12 A Yes, sir.

13 Q And where do you live, Mr. Williams?

14 A Slocomb, 658 South County Road 9.

15 Q And you're a native of Slocomb, would that be  
16 true?

17 A Yes, sir.

18 Q Went to high school there?

19 A Yes, sir.

20 Q Finished in 1983?

21 A Yes, sir.

22 Q And then after that you went to junior college,  
23 I think at Wallace State for a while?

24 A Yes, sir.

25 Q And after you finished at Wallace State did you

1 go into the military?

2 A Yes, sir.

3 Q And you served in what branch?

4 A The Army.

5 Q And how long were you in the Army?

6 A Till 1991.

7 Q And what did you do in the Army?

8 A I was a tanker.

9 Q And did you receive an honorable discharge?

10 A Yes, sir.

11 Q After you got out of the Army what job did you  
12 have?

13 A RC Cola there in Dothan.

14 Q And what did you do for RC in Dothan?

15 A Route salesman.

16 Q How long did you do that job?

17 A Roughly a year.

18 Q After that job what did you do?

19 A Cattle business.

20 Q And what -- was there a particular cattle  
21 business or company that you worked for?

22 A Perry Livestock.

23 Q And what did you do for Perry Livestock?

24 A Dispatch, invoicing, stuff like that.

25 Q And how long did you do that job?

1 A From about '92 to '95.

2 Q And then in 1995 what job did you take?

3 A Waylon Jones RV Center.

4 Q And what did you do at Waylon Jones RV Center?

5 A I started off counter parts and worked my way  
6 into the office finance.

7 Q When you say office finance, what do you mean  
8 by that?

9 A Just basically getting people financed that  
10 want to buy something through different  
11 lenders.

12 Q And did you become familiar with dealing with  
13 lenders to obtain financing for prospective  
14 purchasers of Waylon Jones RV during that time  
15 period?

16 A Yes, sir.

17 Q And I may be mistaken, you may have to correct  
18 me, but were there two periods of time that you  
19 worked for Waylon Jones?

20 A Yes.

21 Q And the first period of time, when would that  
22 have been?

23 A I believe I left there in '98 or -- I think it  
24 was '99.

25 Q And you worked there from '95 to '99

1 approximately?

2 A Yes, sir.

3 Q When you were doing financing for customers at  
4 Waylon Jones the first time you were there, did  
5 you become familiar with Union Planters Bank  
6 and Dale York?

7 A Yes.

8 Q So would it be fair to say that Union Planters  
9 knew you, knew of Jon Williams back in the late  
10 1990s?

11 A I think that's when we got signed up, yes, sir.

12 Q You mean Waylon Jones got signed up?

13 A Yes, sir.

14 Q So you had obtained financing for your  
15 customers through Union Planters back, what,  
16 seven or eight years ago now?

17 A Yes, sir.

18 Q And so you were someone that was known to Union  
19 Planters, would that be true?

20 A Yes, sir.

21 Q Always had good relations with them during that  
22 time period, would that be fair to say?

23 A Yes, sir.

24 Q And when you left Waylon Jones in 1999 or so  
25 where did you go?



1 A Emerald Coast RV.

2 Q And what did you do at Emerald Coast RV?

3 A Finance.

4 Q Same thing that you had been doing at Waylon  
5 Jones?

6 A Yes, sir.

7 Q Did you continue to do work with Union Planters  
8 during that time?

9 A Yes, sir.

10 Q So you're again someone that was known to Union  
11 Planters back in the '99, 2000 time period?

12 A Yes, sir.

13 Q Had good relations with them I trust?

14 A Yes, sir.

15 Q Sold them good contracts?

16 A Yes, sir.

17 Q Didn't have -- and how long were you with  
18 Waylon Jones during that period of time?

19 A Emerald Coast or --

20 Q I'm sorry, Emerald Coast. I beg your pardon.

21 A Little over a year, I think, right at.

22 Q And then you left and went back to Waylon  
23 Jones?

24 A Yes, sir.

25 Q When was that that you left to go back to

1 Waylon Jones?

2 A I believe it was around 2000.

3 Q And what did you do when you went back to  
4 Waylon Jones?

5 A Basically the same thing.

6 Q Financing?

7 A (Indicated in the affirmative by a nod of the  
8 head.)

9 Q I need you to say yes or no.

10 A Yes, sir, I'm sorry.

11 Q And, again, did you continue to work with Union  
12 Planters and Dale York?

13 A Yes, sir.

14 Q So you were known to them during that time  
15 period?

16 A Yes, sir.

17 Q Sold good contracts to them --

18 A Yes, sir.

19 Q -- would that be fair to say? Now, there came  
20 a point in time that you left Waylon Jones,  
21 would that be true?

22 A Yes, sir.

23 Q And when was that?

24 A October, November of '01, I believe.

25 Q Okay.

1 THE COURT: Are you jurors hearing  
2 the witness's testimony okay?

3 JURORS: (Indicating.)

4 MR. SMITH: Your Honor, may I have  
5 permission to move about?

6 THE COURT: Yes, sir.

7 MR. SMITH: Thank you, sir.

8 THE COURT: The only concern I have  
9 is these jurors on the far end of the jury  
10 box there may not be able to see the  
11 witness.

12 MR. SMITH: Okay. You're right,  
13 Judge. I may not be able to do this.

14 THE COURT: There you go.

15 MR. SMITH: Is this better?

16 THE COURT: Yeah.

17 MR. SMITH: Okay.

18 BY MR. SMITH:

19 Q And why did you leave Waylon Jones in November  
20 of 2001?

21 A He was going out of business or --

22 Q Now, before November of 2001 did you know  
23 Comber Borland, the individual right here?

24 A Yes, sir.

25 Q How long had you known Mr. Borland in 2001?

1 A Since I had went to Emerald Coast. I guess a  
2 little over a year.

3 Q Was he a coworker of yours there at Emerald  
4 Coast?

5 A Yes, sir.

6 Q Do you know what he did at Emerald Coast?

7 A He was in sales.

8 Q And did you and he sometime in late 2001  
9 determine that you and he wanted to start your  
10 own business?

11 A Yes, sir.

12 Q And what business did you and he start?

13 A Sunshine Camping Center.

14 Q And was that an incorporated business?

15 A Yes, sir.

16 Q Were you determined to be the president of that  
17 corporation?

18 A Yes, sir.

19 Q And was Mr. Borland going to be the vice  
20 president of that corporation?

21 A Yes, sir.

22 Q And were you going to have 50 percent of the  
23 stock?

24 A Yes, sir.

25 Q And was Mr. Borland going to have the other

1 50 percent?

2 A Yes, sir.

3 Q Do you remember how many shares of stock in the  
4 company there were?

5 A I think there was 500.

6 Q I think that's right. So you had 250 shares  
7 and Mr. Borland had 250 shares?

8 A Yes, sir.

9 Q Now, did you and he -- at least when you formed  
10 the corporation in November of 2001 -- come up  
11 with sort of division of -- any sort of  
12 division of labor as to how Mr. Borland would  
13 do something and you would do something? How  
14 was that worked out?

15 A Kind of what we knew. I knew the financing  
16 side. He was more into sales, and he knew a  
17 little bit more about mechanical than I did.  
18 So we just kind of -- was a given that we  
19 separated like that most of the time.

20 Q Okay. Did you anticipate that -- and where was  
21 Sunshine Camping Center located in  
22 November 2001?

23 A In Level Plains.

24 Q And was it always in Level Plains?

25 A Yeah.

1 Q Up until the time you left?

2 A Yes, sir.

3 Q And you would have left when?

4 A January of '04.

5 Q You had a lot there?

6 A We were renting a lot and -- yes, sir.

7 Q What type of RV's -- I take it it was RV's that  
8 were sold?

9 A Yes, sir.

10 Q What type of RV's were sold?

11 A We had motor homes, travel trailers, fifth  
12 wheels, pop-up campers.

13 Q Do you know or know of an individual at Union  
14 Planters Bank named John Gill?

15 A Yes, sir.

16 Q And who do you understand Mr. Gill to be?

17 A Vice president, I believe, at that time.

18 Q Had you had any dealings with him before  
19 November or December of 2001?

20 A Yes.

21 Q And what kind of dealings had you had with him?

22 A Him and Don -- I forget his last name -- him  
23 and the president was one that actually signed  
24 me up or signed Waylon Jones up at the  
25 dealership.

1 Q So when would that have been?

2 A I'm not real sure the date on that. Probably a  
3 year and a half, about '96, maybe '97. I'm not  
4 real sure.

5 Q So going again back to the '96, '97 timeframe,  
6 you or somebody -- you, Jon Williams, was  
7 somebody that was known to Union Planters?

8 A Yes.

9 Q And known at least at that time to be someone  
10 who was trustworthy?

11 A Yes.

12 MR. SHIRLEY: Object. Object.

13 THE COURT: I sustain that objection  
14 and ask the jury to disregard that  
15 response.

16 BY MR. SMITH:

17 Q When you and Mr. Borland formed Sunshine, did  
18 you believe that you would need to obtain  
19 financing for your customers who wished to buy  
20 RV's?

21 A Yes, sir.

22 Q Did you do anything to try to locate financing  
23 for your customers?

24 A Yes, sir.

25 Q And to that end in November or December of 2001

1 did you provide Union Planters with certain  
2 documents?

3 A I believe I called John Gill and talked to him.

4 Q What did you tell Mr. Gill?

5 A That we were new, trying to get set up to do  
6 some financing because we knew we would need  
7 it. And he sent me a packet.

8 Q Okay. I want to show you documents that we've  
9 used in this case. It's really a group of  
10 documents, but it's Union Planters documents  
11 Exhibit Number 1.

12 (Whereupon, Plaintiff's Exhibit  
13 Number 1, page 10, was marked  
14 for identification.)

15 BY MR. SMITH:

16 Q And I want to call your attention to page 10.  
17 They're numbered in the lower right-hand  
18 corner. Do you have it there?

19 A Yes, sir.

20 Q Do you recognize that?

21 A Yes, sir.

22 Q And tell us what that is, please.

23 A If my memory -- it's been a long time ago, I  
24 don't know if John requested me to put  
25 something on my letterhead requesting some



1 retail financing. This looks like it probably  
2 is.

3 Q Was that something you provided to him?

4 A Yes, sir.

5 MR. SMITH: Your Honor, we would  
6 offer page 10 of Union Exhibit 1.

7 MR. SHIRLEY: No objection.

8 THE COURT: It's admitted.

9 (Whereupon, Plaintiff's Exhibit  
10 Number 1, page 10, was admitted  
11 into evidence.)

12 BY MR. SMITH:

13 Q You see page 10 on the screen?

14 MR. SHIRLEY: John, excuse me just  
15 one minute. Is that gonna be Plaintiff's  
16 Exhibit Number 10 or --

17 MR. SMITH: One. Page 10 of  
18 Plaintiff's Exhibit Number 1.

19 MR. SHIRLEY: You're introducing the  
20 whole exhibit?

21 MR. SMITH: No, I'm introducing right  
22 now page 10.

23 MR. SHIRLEY: And it's gonna be  
24 Plaintiff's Exhibit 10 or Plaintiff's  
25 Exhibit 1?

1 MR. SMITH: Plaintiff's Exhibit 1,  
2 page 10.

3 MR. SHIRLEY: Okay. Thank you. I'm  
4 sorry.

5 BY MR. SMITH:

6 Q Now, do you see the letter that you sent on the  
7 screen here.

8 A Excuse me?

9 Q Can you see it on the screen here?

10 A Yes, sir.

11 Q Is this Sunshine Camping Center letterhead at  
12 the top?

13 A Yes, sir.

14 Q All right. And you signed as Jon K. Williams  
15 president, correct?

16 A Doesn't look like I signed it but, yeah, I sent  
17 it. I recognize it.

18 Q You prepared this, didn't you?

19 A Yes, sir.

20 Q And Mr. Gill was someone that you knew at Union  
21 Planters; is that correct?

22 A Yes, sir.

23 Q You told him that you and Mr. Borland were the  
24 owners of the company?

25 A Yes, sir.

1 Q And you were president and Mr. Borland was the  
2 vice president?

3 A Yes, sir.

4 Q And you told Mr. Gill that you were the finance  
5 manager, correct?

6 A Yes, sir.

7 Q Okay. Turn with me to page 1, if you will,  
8 please. And do you have pages 1 and 2 of  
9 Exhibit 1?

10 (Whereupon, Plaintiff's Exhibit  
11 1, pages 1 and 2, were marked  
12 for identification.)

13 A Yes, sir.

14 Q And do you recognize that document?

15 A Yes, sir.

16 Q And is that something that Sunshine and Union  
17 Planters entered into?

18 A Yes, sir.

19 Q All right.

20 MR. SMITH: Your Honor, we would  
21 offer those two pages.

22 MR. SHIRLEY: Is that gonna be  
23 Plaintiff's Exhibit 2?

24 MR. SMITH: No, sir, Plaintiff's  
25 Exhibit 1, pages 1 and 2.

1 THE COURT: They're admitted.

2 (Whereupon, Plaintiff's Exhibit  
3 Number 1, pages 1 and 2, were  
4 admitted into evidence.)

5 BY MR. SMITH:

6 Q All right. Now, what are we looking at there,  
7 please, sir?

8 A It's a retail agreement with the dealer and the  
9 lender.

10 Q And were you familiar with that kind of  
11 agreement before November and December of 2001?

12 A I've seen them, yes, sir.

13 Q Was that the kind of agreement that you had  
14 entered into when you were at the earlier  
15 dealer --

16 MR. SHIRLEY: I would object. That's  
17 hearsay. That's not the best evidence  
18 either. He's asking him to recount  
19 something that went on ten years ago.  
20 It's not the best evidence to prove  
21 whether it's the same or similar  
22 documents; hearsay information of a  
23 document that has nothing whatsoever to do  
24 with this case.

25 THE COURT: I sustain.

1 MR. SMITH: Okay.

2 BY MR. SMITH:

3 Q Now, did you enter into this recreational  
4 vehicle dealer agreement on behalf of Sunshine  
5 with Union Planters?

6 A Yes, sir.

7 Q You agreed to that, didn't you?

8 A Yes, sir.

9 Q And were you acting on behalf of the company in  
10 your capacity as president of the company when  
11 you agreed to that?

12 A Yes, sir.

13 Q Particularly I'll call your attention to  
14 paragraph two the first sentence, the dealer  
15 will identify each applicant. You see that?

16 A Yes, sir.

17 Q Do you understand -- when you entered into  
18 this, did you understand what the term  
19 "identify" meant?

20 A Yes, sir.

21 Q And what did you understand it to mean?

22 MR. SHIRLEY: Judge, at this time we  
23 would object for him to give an  
24 explanation of the document. Page 2 is  
25 entered in as a Plaintiff's Exhibit.

1 Plaintiff's Exhibit 1, pages 1 and 2 is  
2 the agreement that he's asking about.  
3 It's a document that's executed to -- for  
4 him to --

5 MR. SMITH: Your Honor, Your Honor,  
6 if Mr. Shirley has an objection, can we  
7 have it outside the hearing of the jury?  
8 I don't think it's proper for him to have  
9 a speaking objection in front of the jury.

10 THE COURT: Can you simplify your  
11 objection or do you need --

12 MR. SHIRLEY: Yes, sir, if I can step  
13 up so the Court can hear.

14 THE COURT: All right.

15 (Whereupon, counsel conferred at  
16 the Bench out of the hearing of  
17 the jury.)

18 MR. SHIRLEY: I object to him asking  
19 his understanding of the documentation  
20 because the documentation is in contracts  
21 or agreement that the claims of this  
22 lawsuits concern are to be determined  
23 based upon the language. And for him to  
24 give his meaning and understanding is  
25 violation of the parol evidence rule.

1 THE COURT: Okay.

2 MR. SMITH: He's the president of the  
3 company. He is, in fact, the company when  
4 he entered into that document. I think he  
5 can explain what he means. I don't think  
6 it's a violation of the parol evidence  
7 rule. I frankly don't understand the  
8 objection. I just don't think it's a  
9 proper objection. It's due to be  
10 overruled.

11 THE COURT: Mr. Matthews, do you have  
12 anything?

13 MR. MATTHEWS: (Indicated in the  
14 negative by a shake of the head.)

15 THE COURT: I overrule the objection.  
16 (The following was heard in open  
17 court.)

18 BY MR. SMITH:

19 Q As president of the company what did you  
20 understand the term "identify" to mean?

21 A Recognize who's giving you the application.

22 Q And what did you understand as president of the  
23 company the term "dealer" to mean?

24 A Me or the representative of --

25 Q Sunshine Camping Center?

1 A -- Sunshine Camping Center.

2 Q And "applicant," what did you understand that  
3 term to mean?

4 A Person applying for the loan.

5 Q Third sentence talks about the dealer shall  
6 assume all loss and damage. Now, again, dealer  
7 would be Sunshine, would it not?

8 A Yes, sir.

9 Q And what did you understand as president of the  
10 company the phrase "all loss and damage" to  
11 mean?

12 MR. SHIRLEY: Object. That asks for  
13 a legal opinion, asks for a legal  
14 conclusion. It violates the merger rule.  
15 The document speaks for itself.

16 THE COURT: Overrule your objection.  
17 You may answer the question.

18 BY MR. SMITH:

19 Q As president of the company what did you  
20 understand all loss and damage to mean?

21 A Anything lost by whatever it states. I mean,  
22 (inaudible)

23 (Reporter asked for  
24 clarification.)

25 A Anything wrong with the contract.



1 Q In other words, if an unenforceable contract  
2 was bought by Union Planters, if that contract  
3 was unenforceable because of something Sunshine  
4 did, did you understand when you signed that  
5 document that Sunshine would be responsible for  
6 that loss and damage?

7 A Yes, sir.

8 Q And that's fairly clear, isn't it, to you?

9 A Yes, sir.

10 Q And that was clear to you when you signed this  
11 document?

12 A Yes, sir.

13 Q Wasn't confusing at all, was it?

14 A No, sir.

15 Q Sustained by the bank. You understood that to  
16 be, at least at that time, Union Planters,  
17 correct?

18 A Yes, sir.

19 Q And it goes on, which results from any false  
20 representation contained in the application  
21 which the dealer knows to be false when the  
22 application is submitted to the bank, correct?

23 A Yes, sir.

24 Q And you agreed to that on behalf of Sunshine?

25 A Yes, sir.

1 Q And that would have been, what, January 26,  
2 2002?

3 A Yes, sir.

4 Q Page six -- excuse me, paragraph six of that  
5 page. The dealer warrants that all contracts  
6 will be valid and enforceable against the  
7 purchaser. You see that?

8 A Yes, sir.

9 Q Did you agree to that as president of Sunshine  
10 Camping Center?

11 A Yes, sir.

12 Q Sunshine Camping Center agree to that?

13 A Yes, sir.

14 Q And is that pretty clear to you?

15 A Yes, sir.

16 Q You understood that, didn't you?

17 A Yes, sir.

18 Q It's not confusing, is it?

19 A No, sir.

20 Q The dealer will at all times hereafter  
21 indemnify and hold harmless the bank against  
22 any and all liabilities, loans, damage, costs,  
23 and expenses of whatever kind or nature,  
24 including reasonable attorneys fees arising  
25 from or connected with claims of

1           misrepresentations or fraud, failure, or  
2           refusal in handling warranty obligations in  
3           connection with the sale or financing of any  
4           recreational vehicle under this, or any other  
5           agreement, between the parties hereto. Do you  
6           see that?

7           A       Yes, sir.

8           Q       Who did you understand the parties hereto to be  
9           as president of the company?

10          A       Sunshine.

11          Q       And Union Planters?

12          A       Yes, sir.

13          Q       And you agreed to that provision as president  
14          of this company?

15          A       Yes, sir.

16          Q       Did you agree to it?

17          A       Yes, sir.

18          Q       You understood it?

19          A       Yes, sir.

20          Q       It's not confusing, is it?

21          A       No, sir.

22          Q       Quite clear, isn't it?

23          A       Yes, sir.

24          Q       And did you have an understanding of what the  
25          words "indemnify and hold harmless" meant?

1 A Indemnify, I'm not real sure. But hold  
2 harmless, yes, sir.

3 Q Do you know what that means?

4 A Yes, sir.

5 Q What was your understanding?

6 A The dealer's responsible for making sure you  
7 had a valid contract.

8 Q And if there was a contract that was invalid  
9 that the bank paid for, that the dealer would  
10 have to pay it back?

11 MR. SHIRLEY: Object. That invades  
12 the ultimate issue. It calls for a legal  
13 opinion and conclusion. The ultimate  
14 issue is what to do about this agreement.  
15 Whether it applies in his opinion would be  
16 irrelevant, and it would invade the  
17 province of the jury to decide the outcome  
18 of the case.

19 THE COURT: Overruled. You may  
20 answer.

21 BY MR. SMITH:

22 Q You may answer. Do you recall the question?

23 A Repeat it, please.

24 Q I'll try to restate it. Did you understand and  
25 hold harmless to mean that if it was a bad

1 contract, one the bank couldn't collect on, and  
2 it was bad because of something Sunshine did,  
3 Sunshine would have to pay the bank the money  
4 back?

5 A Yes, sir.

6 MR. SHIRLEY: We would restate for  
7 the record our objection, Your Honor.

8 THE COURT: It's overruled.

9 (Whereupon, Plaintiff's Exhibit  
10 Number 1, page 3, was marked  
11 for identification.)

12 BY MR. SMITH:

13 Q Now, before we move on, let me see if we can --  
14 well, I'll tell you what, now is not the time  
15 for that. And on page three of the exhibit, is  
16 that your signature?

17 A Yes, sir.

18 Q And is that where you manifested as president  
19 of the company your agreement to this contract?

20 A Yes, sir.

21 MR. SHIRLEY: Object to the form of  
22 the question.

23 THE COURT: Overruled.

24 MR. SHIRLEY: Didn't define what  
25 manifestation means.

1 THE COURT: I overrule.

2 MR. SMITH: We offer page 3, Your  
3 Honor, of Exhibit 1.

4 THE COURT: Yes, sir, it's admitted.  
5 (Whereupon, Plaintiff's Exhibit  
6 Number 1, page 3, was admitted  
7 into evidence.)

8 (Whereupon, Plaintiff's Exhibit  
9 Number 1, page 4, was marked  
10 for identification.)

11 BY MR. SMITH:

12 Q Now, did you and Mr. Borland also sign a  
13 document sometime in January '02 or thereabouts  
14 that said who on behalf of Sunshine could  
15 assign contracts, financing contracts to the  
16 bank?

17 A I remember the document but I don't remember  
18 the timeframe.

19 Q Turn to page 4 of the exhibit, please. And do  
20 you recognize that?

21 A Yes, sir.

22 Q And what is that, please?

23 A It's who can sign a contract with Union  
24 Planters representing Sunshine Camping Center.

25 MR. SMITH: Your Honor, we would

1 offer page 4 of Exhibit 1.

2 THE COURT: It's admitted.

3 (Whereupon, Plaintiff's Exhibit  
4 Number 1, page 4, was admitted  
5 into evidence.)

6 BY MR. SMITH:

7 Q Now, this is your signature here at the bottom;  
8 is that correct?

9 A Yes, sir.

10 Q And this is your signature up here?

11 A Yes, sir.

12 Q And we see that Mr. Borland's name appears  
13 there as well?

14 A Yes, sir.

15 Q Is that his signature next to that?

16 A Yes, sir.

17 Q Did you see him sign that?

18 A I believe so, yes.

19 Q And so you and he were the two people on behalf  
20 of Union Planters -- excuse me, on behalf of  
21 Sunshine authorized to assign financing  
22 contracts to the bank?

23 A Yes, sir.

24 (Whereupon, Plaintiff's Exhibit  
25 Number 1, page 19, was marked

1 for identification.)

2 BY MR. SMITH:

3 Q Turn to page 19 of the exhibit. Well, turn to  
4 page 19. Do you recognize that document?

5 A Yes, sir.

6 Q And would you tell us what that is, please?

7 A It's power of attorney for Union Planters to be  
8 able to do something with the title in case  
9 they needed to.

10 Q Okay.

11 MR. SMITH: Your Honor, we'd offer  
12 page 19.

13 THE COURT: It's admitted.

14 (Whereupon, Plaintiff's Exhibit  
15 Number 1, page 19, was admitted  
16 into evidence.)

17 BY MR. SMITH:

18 Q Did you sign that?

19 A As a notary, yes, sir.

20 Q Who was the person, though, that signed it --  
21 signed a limited power of attorney for  
22 Sunshine?

23 A Comber.

24 Q Mr. Borland?

25 A Yes, sir.



1 Q He signed on January 26, 2002?

2 A Yes, sir.

3 Q Now, did Sunshine have a bank account that it  
4 used for -- to operate with?

5 A Yes, sir.

6 Q Where was that bank account?

7 A I believe our first one was at SouthTrust Bank.

8 Q Did you later have an account at CB&T?

9 A Yes, sir.

10 Q That was in Enterprise?

11 A Yes, sir.

12 Q Do you remember when that account was first  
13 opened?

14 A I don't recall the date.

15 Q Okay. I want to show you Exhibit 11.

16 (Whereupon, Plaintiff's Exhibit  
17 Number 11 was marked for  
18 identification.)

19 BY MR. SMITH:

20 Q And turn your attention to the last page of the  
21 exhibit. Do you recognize that?

22 A Yes, sir.

23 Q And tell us what that is, please.

24 A It's when we opened the account.

25 Q With CB&T?

1 A Yes, sir.

2 Q Do you recognize your signature on that  
3 document?

4 A Yes, sir.

5 MR. SMITH: Your Honor, we would  
6 offer Exhibit 11.

7 THE COURT: Admitted.

8 (Whereupon, Plaintiff's Exhibit  
9 Number 11 was admitted into  
10 evidence.)

11 MR. SHIRLEY: What number is that  
12 gonna be?

13 MR. SMITH: It's Exhibit Number 11.

14 BY MR. SMITH:

15 Q Let me put that last page on the screen. Now,  
16 CB&T in Enterprise is also known as Community  
17 Bank & Trust; is that correct?

18 A Yes, sir.

19 Q Do you remember the person that you dealt with  
20 there?

21 A I really don't know who opened the account.

22 Q Was it Linda Blair?

23 A I suppose, yes, sir.

24 Q Shows on the document that your account opened  
25 with CB&T was opened on March 11 of 2002; is

1           that correct?

2       A     Yes, sir.

3       Q     And you agreed that that's the date the CB&T  
4           account was opened?

5       A     Yes, sir.

6       Q     And that was a checking account?

7       A     Yes, sir.

8       Q     And that was one of the business accounts that  
9           Sunshine had; is that correct?

10      A     Yes, sir.

11      Q     And account number 2524635, was that the  
12           account number?

13      A     Yes, sir, I guess it was.

14      Q     You don't dispute that, do you?

15      A     No, sir.

16      Q     Did you and Mr. Borland both have signatory  
17           authority on that account when it was opened?

18      A     Yes, sir.

19      Q     Meaning both of you could write checks?

20      A     Yes, sir.

21      Q     Where would the statements for that CB&T  
22           account go?

23      A     I guess to our post office box.

24      Q     Would there be anybody at Sunshine who would  
25           review those checking account statements when

1           they'd come in?

2       A       Comber normally did.

3       Q       Comber would? Mr. Borland would review the  
4           checking account statements?

5       A       Yes, sir.

6       Q       And was that true as long as you were at the  
7           business?

8       A       Yes, sir.

9       Q       Now, there came a point in time, didn't there,  
10           that you were no longer on that CB&T account;  
11           would that be correct?

12      A       Yes, sir.

13      Q       And I call your attention to the page just  
14           before the last page of Exhibit 11, and that's  
15           marked as signature update; is that correct?

16      A       Yes, sir.

17      Q       August 5<sup>th</sup>, 2002?

18      A       Yes, sir.

19      Q       And the document shows that only Mr. Borland --  
20           as of August 5, 2002, only Mr. Borland had  
21           signature authority on this account; is that  
22           correct?

23      A       Yes, sir.

24      Q       You were removed from the account?

25      A       Yes, sir.

1 Q Did Sunshine tell Union Planters Bank to make  
2 deposits into that CB&T account?

3 A Not real sure when that started. I know that  
4 we came with the -- they were all doing that  
5 electronic deposit.

6 Q Okay. Now, there was a change in your  
7 relationship with Mr. Borland at Sunshine in  
8 August of 2002, wasn't there?

9 A Yes, sir.

10 Q I want to show you what has been marked as  
11 Exhibit 13 in this case.

12 (Whereupon, Plaintiff's Exhibit  
13 Number 13 was marked for  
14 identification.)

15 BY MR. SMITH:

16 Q Those are some records from Don Pittman.  
17 That's what the first page shows, correct?

18 A Yes, sir.

19 Q Who is Mr. Pittman?

20 A He was our -- the lawyer that set up our  
21 corporation.

22 Q Set up Sunshine Camping Center?

23 A Yes, sir.

24 Q And if you can look at the documents that are  
25 part of Exhibit 13, are those the corporate

1 records of Sunshine Camping Center?

2 A Yes, sir.

3 MR. SMITH: Your Honor, we would  
4 offer Exhibit 13.

5 THE COURT: Admitted.

6 (Whereupon, Plaintiff's Exhibit  
7 Number 13 was admitted into  
8 evidence.)

9 MR. SHIRLEY: You gonna ask him about  
10 it, I'd like to look at it.

11 MR. SMITH: You've seen it.

12 MR. SHIRLEY: Well, I'd like to look  
13 and see --

14 MR. SMITH: Okay.

15 MR. SHIRLEY: -- for sure that --  
16 what it is.

17 BY MR. SMITH:

18 Q I want to call your attention, please, to page  
19 21. Now, there is a document called bill of  
20 sale, correct?

21 A Yes, sir.

22 Q And that reflects your sale of 5 of your 250  
23 shares of stock in the corporation to  
24 Mr. Borland, correct?

25 A Yes, sir.

1 Q And turn with me to page 22. Now, that is a  
2 document called security agreement, correct?

3 A Yes, sir.

4 Q And what is the date of that security  
5 agreement? I believe it's on the next page,  
6 23?

7 A Twenty-ninth day of August, 2002.

8 Q And that was a note that you signed where you  
9 agreed to pay Mr. Borland \$15,000; is that  
10 correct?

11 A Yes, sir.

12 Q Hold onto that page. Well, I'll tell you what,  
13 let's talk about that. Why on August 29 of  
14 2002, did you transfer five shares to  
15 Mr. Borland and agree to this \$15,000 security  
16 agreement?

17 A I was having some problems financially, and I  
18 owed the company -- we determined that amount  
19 of money, and was gonna -- you know, agreed to  
20 pay him back and turn over my control.

21 Q You had taken \$15,000 from the company, hadn't  
22 you?

23 A Yes, sir.

24 Q Without Mr. Borland's knowledge, correct?

25 A Some of it, yes, sir.

1 Q Some of it? But some of it had been with his  
2 knowledge?

3 A Yes, sir.

4 Q But it was \$15,000 that you had taken out of  
5 the company that you shouldn't have taken out  
6 of the company; would that be fair to say?

7 A Some of it, yes, sir.

8 Q But as of August 29, Mr. Borland knew that you  
9 had taken this \$15,000 out of the company,  
10 correct?

11 A Yes, sir.

12 Q And you said you had financial problems, and  
13 I'm sorry to ask this but I need to. You had a  
14 gambling problem, didn't you?

15 A Yes, sir.

16 Q And Mr. Borland knew that, didn't she -- didn't  
17 he?

18 A He knew I gambled, yes, sir.

19 Q Did he know that you owed money for gambling?

20 A Directly I don't think he did, no, sir.

21 Q But he knew you had taken some of this \$15,000  
22 without his knowledge, correct?

23 A Yes, sir.

24 Q And he wanted you to, as part of this  
25 agreement, give up control of the company,



1 correct?

2 A Well, I didn't have control, but give him  
3 control.

4 Q Give him control?

5 A Yes, sir.

6 Q Did it have anything to do with inventory? In  
7 other words, buying inventory?

8 A No, sir.

9 Q Did it have anything to do with Mr. Borland  
10 securing financing from some family member to  
11 buy more inventory for the business?

12 A Well, now, we needed the money back in the  
13 company. We were a young company that our  
14 inventory we would buy as we go.

15 Q Right.

16 A And the company needed the money.

17 Q Right.

18 A And I think -- then again I'm not real, you  
19 know, 100 percent sure, but I think at that  
20 time Comber might have been trying to get some  
21 outside financing. And me being -- you know,  
22 him being in control of the company would help  
23 do that.

24 Q And some part of that, though, of that \$15,000  
25 was money you took from the company without

1 Mr. Borland's knowledge?

2 A Yes.

3 MR. SHIRLEY: Object, that's  
4 argumentative. That's not direct  
5 testimony, that's arguing with the witness  
6 and argumentative, improper question.

7 THE COURT: I overrule.

8 BY MR. SMITH:

9 Q Was your answer yes?

10 A Yes, sir.

11 Q Mr. Borland allowed you to stay on with the  
12 company, did he not?

13 A Yes, sir.

14 Q And he allowed you to continue to do financing;  
15 would that be true?

16 A Yes, sir.

17 Q Even though that you had taken some portion of  
18 this \$15,000 without his knowledge?

19 A Yes, sir.

20 Q And you resigned as an officer of the company,  
21 didn't you?

22 A Yes, sir.

23 Q Turn to page 26. That was your statement of  
24 resignation on August 29, 2002, correct?

25 A Yes, sir.

1 Q Did you ever inform the bank that you had  
2 resigned as an officer?

3 A I don't recall, no, sir.

4 Q Did Sunshine ever inform the bank that you had  
5 resigned as an officer?

6 A I don't believe -- I don't recall, no, sir.

7 Q Did Mr. Borland ever inform the bank that you  
8 had resigned as an officer?

9 A I can't answer that, I don't know.

10 Q But after you resigned on August 29, 2002, you  
11 continued to do financing contracts, didn't  
12 you?

13 A Yes, sir.

14 Q I mean, that was part of the agreement you had  
15 with Mr. Borland when you resigned and gave him  
16 51 percent of the stock and entered into this  
17 \$15,000 promissory note, that you would  
18 continue to do financing with the company?

19 A That wasn't a specific thing. He said I could  
20 keep working.

21 Q And part of your work was to do financing?

22 A Yes, sir.

23 Q Now, tell us who Hubert A. Lawson, III, is?

24 A Brother-in-law.

25 Q Did Mr. Lawson ever buy anything from Sunshine

1 Camping Center?

2 A No, sir.

3 Q I need to show you what has been marked as  
4 Exhibit 2-1, and I want to call your attention  
5 to page 4, please.

6 (Whereupon, Plaintiff's Exhibit  
7 Number 2-1, page 4, was marked  
8 for identification.)

9 BY MR. SMITH:

10 Q Do you have it there?

11 A Yes, sir.

12 Q What is that?

13 A You call it a buyer's order.

14 MR. SMITH: Your Honor, we would  
15 offer page 4 of Exhibit 2-1.

16 THE COURT: It's admitted.

17 (Whereupon, Plaintiff's Exhibit  
18 Number 2-1, page 4, was  
19 admitted into evidence.)

20 BY MR. SMITH:

21 Q Whose handwriting appears on that document?

22 A Mine.

23 Q And the signature at the bottom, Hubert A.  
24 Lawson, who signed that?

25 A I did.

1 Q The address of 658 South County Road 9,  
2 Slocomb, Alabama 36375, is that Mr. Lawson's  
3 true address?

4 A No, sir.

5 Q Home phone number (334)588-6146, was that his  
6 true phone number?

7 A No, sir.

8 Q Was there a sale of a vehicle described in here  
9 to Mr. Lawson?

10 A No, sir.

11 Q What was done with -- turn to page 3 of the  
12 document, please. What is that?

13 A It's a credit application.

14 Q For Mr. Lawson?

15 A Yes, sir.

16 Q For a sale in September of 2002?

17 A Yes, sir.

18 Q Who completed that?

19 A I did.

20 MR. SMITH: Your Honor, we would  
21 offer page 3.

22 THE COURT: It's admitted.

23 (Whereupon, Plaintiff's Exhibit  
24 Number 2-1, page 3, was marked  
25 for identification and admitted

1 into evidence.)

2 BY MR. SMITH:

3 Q Mr. Lawson signed here, applicant signature?

4 A No, sir.

5 Q Did you do that?

6 A Yes, sir.

7 Q What did you do with this document?

8 A It all gets faxed to Union Planters.

9 Q And you say it all, would that include the one  
10 we looked at just before the buyer's order?

11 A Yes, sir, the buyer's order, the credit  
12 application, and -- that's the two documents  
13 that normally get faxed.

14 Q And who at Union Planters would you have sent  
15 that to?

16 A Most of the time I worked with Dale or I  
17 believe it was Lisa Driver.

18 Q You mean Dale York?

19 A Yes, sir.

20 Q Turn with me to page 2 of the exhibit. Do you  
21 recognize that?

22 A Yes, sir.

23 Q What is that?

24 A It's an approval letter that they sent back.

25 MR. SMITH: Your Honor, we would

1 offer page 2.

2 THE COURT: It's admitted.

3 (Whereupon, Plaintiff's Exhibit  
4 Number 2-1, page 2, was marked  
5 for identification and admitted  
6 into evidence.)

7 BY MR. SMITH:

8 Q Now, see thanks Dale. Is that from Dale York?

9 A Yes, sir.

10 Q It shows here that there was an amount financed  
11 of 1,000 -- excuse me, \$15,466.50, correct?

12 A Yes, sir.

13 Q It also shows that there was a down payment of  
14 \$6500, correct?

15 A Yes, sir.

16 Q And where did that \$6500 number on the down  
17 payment line come from?

18 A It wasn't put on the down payment line on the  
19 buyer's. It was put as a just down -- but  
20 there was no money put down.

21 Q Okay. But I mean, that was what was written in  
22 the buyer's order, wasn't it?

23 A Yes, sir.

24 Q Okay. But there wasn't a sale is what you're  
25 telling us, right?

1 A Yes, sir.

2 Q But the condition under which -- one of the  
3 conditions under which the bank approved this  
4 was that there was a \$6500 cash down payment.

5 MR. SHIRLEY: Object, asking somebody  
6 in Union Planters in Paducah what the  
7 reason was, he's not an officer --

8 THE COURT: I sustain the objection.

9 MR. SHIRLEY: -- unless he's an agent  
10 at Union Planters.

11 THE COURT: I sustain the objection.

12 BY MR. SMITH:

13 Q The finance amount that Union Planters  
14 approved, according to this document, was  
15 \$15,466.50; is that correct?

16 A Yes, sir.

17 Q I'd like you to turn to page 19 of your exhibit  
18 now.

19 MR. SHIRLEY: I'm sorry I didn't hear  
20 that.

21 MR. SMITH: Page 19.

22 MR. SHIRLEY: Of which exhibit?

23 MR. SMITH: 2-1, the one we've been  
24 looking at.

25 (Whereupon, Plaintiff's Exhibit



Number 2-1, pages 19 and 20,  
were marked for  
identification.)

BY MR. SMITH:

Q Now, what is that?

A     It's a retail contract.

Q Is it continued on page 20?

A I believe that's the back side.

Q Okay. Is that a form that you're familiar with?

A Yes, sir.

Q Did you complete that form?

A Yes, sir.

MR. SMITH: Your Honor, we'd offer  
pages 19 and 20 of Exhibit 2-1.

THE COURT: It's admitted.

(Whereupon, Plaintiff's Exhibit  
Number 2-1, pages 19 and 20,  
were admitted into evidence.)

BY MR. SMITH:

Q You've already told us that there was not a sale of a 1992 Allegro to Mr. Lawson on September 17, 2004, correct?

A Yes, sir.

Q This document that we're looking at, retail

1           installment contract security agreement, had  
2           you been familiar with this document or type of  
3           document before September of 2002?

4 | A Yes, sir.

5 Q And how had you been familiar with this  
6 document?

7 A Been doing the same document since probably  
8 '96, '97.

9	Q	And dealing with Union Planters using this
10		document?

11 | A (Inaudible)

12 (Reporter asked for  
13 clarification.)

14 A Yes, sir, yes, sir.

15 Q It's a standard form?

16       A       It's a standard form.  A lot of banks use same  
17       retail contract.

18 Q There are certain provisions and conditions  
19 contained in this contract; is that right?

20 | A Yes, sir.

21 Q Now, under the terms of this contract who was  
22 financing this transaction on April 17, 2002?

23 | A April, September?

24 Q I'm sorry, thank you. September 17, 2002.

25 | A Union Planters.

1 Q Well, isn't it true that the seller under this  
2 contract was Sunshine Camping Center?

3 A Yes, sir.

4 Q And the buyer supposedly was Mr. Lawson; is  
5 that correct?

6 A Yes, sir.

7 Q And then this -- once this sale, once this sale  
8 went through, the contract here that we're  
9 looking at was assigned to the bank?

10 A Yes, sir.

11 Q And then would the bank pay Sunshine certain  
12 monies for this financing contract?

13 A Yes, sir.

14 Q And with regard to this transaction on  
15 September 17, 2002, was that done?

16 A Yes, sir.

17 Q Now, what monies would have been paid by the  
18 bank as a result of this contract?

19 A The amount financed. And then they give you a  
20 percentage of the amount financed as a ...

21 Q Okay. Now, what is the amount financed  
22 according to the document?

23 A 18,216.50.

24 Q Okay. Just so that we're clear. You signed  
25 Mr. Lawson's name?

1 A Yes, sir.

2 Q And then you signed the assignment of the  
3 contract to the bank?

4 A Yes, sir.

5 Q Where were you when you signed that?

6 A I really don't remember.

7 Q You were employed by Sunshine at the time,  
8 correct?

9 A Yes, sir.

10 Q Part of your job duties at Sunshine was to  
11 assign financing contracts, wasn't it?

12 A Yes, sir.

13 Q Contracts like -- well, contracts of the form  
14 which we're looking at here on pages 19 and 20?

15 A Yes, sir.

16 Q Now, did Sunshine Camping Center receive any  
17 money as a result of that contract?

18 A The check was made out to it, I think.

19 Q Okay. I want you to look -- do you still have  
20 Exhibit 1 there with you?

21 A Yes, sir.

22 Q Turn with me to page 113. What is that?

23 A That's the (inaudible)

24 (Reporter asked for  
25 clarification.)

1 A The check from Union Planters.

2 Q For that \$18,000 number that we referred to  
3 earlier?

4 A Yes, sir.

5 MR. SMITH: Your Honor, we'd offer  
6 page 113 of Exhibit 1.

7 THE COURT: It's admitted.

8 (Whereupon, Plaintiff's Exhibit  
9 Number 1, page 113, was marked  
10 for identification and admitted  
11 into evidence.)

12 BY MR. SMITH:

13 Q Now, that check's made payable to Sunshine  
14 Camping Center, isn't it?

15 A Yes, sir.

16 Q It's not made payable to Jon Williams?

17 A No, sir.

18 Q I want to show you the back of the check. Was  
19 this check deposited into the Sunshine account?

20 MR. SHIRLEY: We object unless he  
21 knows.

22 A I don't --

23 THE COURT: If he knows.

24 BY MR. SMITH:

25 Q Do you know?

1 A No, sir, I don't know.

2 Q Whose handwriting is this right here?

3 A I couldn't say for sure. I mean, that's not  
4 mine.

5 Q It's not yours?

6 A That there's not, no, sir.

7 Q Are you familiar with this number 2524635?

8 A Looks like the account number at CB&T.

9 THE COURT: Mr. Smith, let me  
10 interrupt you right here. I believe we  
11 might need to take a recess at this time  
12 if it will be okay. I'm going to excuse  
13 the jurors. We'll take about a 15 -- 10-  
14 to-15-minute recess, and the bailiff will  
15 let you know when it's time to come back  
16 in.

17 (The jury left the courtroom.)

18 (Break in the proceedings.)

19 (The jury entered the  
20 courtroom.)

21 BY MR. SMITH:

22 Q May it please the Court, ladies and gentlemen.  
23 Mr. Williams, before we took our break we were  
24 talking about the \$18,216.50 that was paid on  
25 the check made out to Sunshine on the first

1 Lawson contract, do you recall that?

2 A Yes, sir.

3 Q And you also had mentioned something about a --  
4 I think finders fee may have been the term that  
5 was used?

6 A I call it commission --

7 Q Commission.

8 A -- for the contract.

9 Q Would you tell the members of the jury what  
10 that was?

11 A Most all of your lenders pay you a percent of  
12 the amount financed as a commission finders fee  
13 for getting the contract. That's your  
14 commission for sending them the deal.

15 Q So in this case the bank paid this \$18,000  
16 first to buy the contract, the amount financed;  
17 is that correct?

18 A Yes, sir.

19 Q And then was there a separate check cut for the  
20 finders fee?

21 A That's the way it normally is done.

22 Q Now, but for this contract for this deal that  
23 really wasn't a deal being assigned, would  
24 there have been any monies paid by the bank to  
25 Sunshine? In other words, if this first Lawson

1 deal hadn't been sent to Sunshine, would there  
2 have been this commission paid?

3 A No.

4 Q I mean, Sunshine only received monies when  
5 there was a deal that went to the bank, would  
6 that be true?

7 A Yes, sir.

8 Q There weren't just monies that were received  
9 each month like a retainer or something like  
10 that, was there?

11 A No, sir.

12 Q All right. Turn to page, if you would, 114 of  
13 Exhibit 1. Do you recognize that?

14 (Whereupon, Plaintiff's Exhibit  
15 1, page 114, was marked for  
16 identification.)

17 A Yes, sir.

18 Q And what is that?

19 A Looks like the commission check.

20 Q For the first Lawson deal?

21 A Yes, sir.

22 MR. SMITH: Your Honor, we would  
23 offer page 114 of Exhibit 1.

24 THE COURT: It's admitted.

25 (Whereupon, Plaintiff's Exhibit



Number 1, page 114, was  
admitted into evidence.)

BY MR. SMITH:

Q You see the \$1,092.99 was paid as the  
commission on this first Lawson contract; is  
that correct?

A Yes, sir.

Q And do you recognize your handwriting on the  
back of the check that we see here?

A Yes, sir.

Q And you were working for Sunshine Camping  
Center when this money was received, weren't  
you?

A Yes, sir.

Q And that's your signature endorsing that check?

A Yes, sir.

Q In what account was that money put, if any?

A I'm not sure it was put in any account.

Q Just cashed it?

A Yes, sir. I'm not 100 percent sure but it  
looks like that.

Q Fair enough. Okay. Now, before we move on, I  
think this is an appropriate place to cover  
this. Turn back with me to page 20 of  
Exhibit 2-1. 2-1 is right here. I think it's

1 the last page. Do you have it there?

2 A Yes, sir.

3 Q And that's the back of the financing contract  
4 for this first Lawson deal, correct?

5 A Yes, sir.

6 Q Now, I'm getting ahead of myself but I think  
7 here's the appropriate place to do it. On the  
8 second Lawson deal, was the back of the  
9 contract like we see there the same?

10 A I would assume so. I mean, I don't have it in  
11 front of me so I don't know.

12 Q Okay. Well, let's talk just a minute about  
13 this, about the first Lawson deal. There's a  
14 box there called assignment by seller, do you  
15 see that? Down toward the bottom of the page.  
16 I'll see if I can help you.

17 A Yeah, okay.

18 Q Assignment by seller?

19 A Yes, sir.

20 Q You got me?

21 A Yes, sir.

22 Q Okay. I've got it blown up some so it will be  
23 a little more legible. See it on the screen  
24 there?

25 A Yes, sir.

1 Q It says, seller sells and assigns. Seller  
2 meant Sunshine Camping Center, didn't it?

3 A Yes, sir.

4 Q That's pretty clear, isn't it?

5 A Yes, sir.

6 Q This retail installment contract and security  
7 agreement, that was the deal, right?

8 A Yes, sir.

9 Q To assignee. Now, who do you understand -- or  
10 who did you understand assignee to be?

11 A Union Planters Bank.

12 Q Its successors. Do you understand that Regions  
13 Bank is the successor to Union Planters?

14 MR. SHIRLEY: Object to the form.  
15 Calls for a legal --

16 THE COURT: Hold on just a minute.

17 MR. SMITH: I'm asking does he  
18 understand that is what --

19 THE COURT: I overrule.

20 BY MR. SMITH:

21 Q Do you understand that?

22 THE COURT: It's to his  
23 understanding.

24 A No, sir.

25 Q You didn't have any understanding one way or

1 the other?

2 A I'm confused on that a little bit, yes, sir.

3 Q Fair enough. Assigns. Do you know whether  
4 Regions is the assigned of Union Planters? Do  
5 you know one way or the other?

6 A No, sir.

7 Q Including all its rights, title, and interest  
8 in this contract. You see that?

9 A Yes, sir.

10 Q Says further: Seller warrants. Did you have  
11 an understanding of what that means?

12 A The seller guarantees.

13 Q And the seller in this case was who?

14 A Sunshine Camping Center.

15 Q Not Jon Williams?

16 A No, sir.

17 Q This is similar to the dealer agreement  
18 language. A: This contract represents a sale  
19 by seller to buyer on a time price basis and  
20 not a cash basis. That's what it says, right?

21 A Yes, sir.

22 Q And this -- at least this one is for the first  
23 Lawson deal, correct?

24 A Yes, sir.

25 Q B: Statements contained in the contract are

1 true and correct. That's what Sunshine was  
2 saying on this first Lawson deal, correct?

3 A Yes, sir.

4 Q E -- I'm gonna skip these other ones. E: This  
5 contract is valid and enforceable in accordance  
6 with its terms. That was a warranty that  
7 Sunshine was making to Union Planters, wasn't  
8 it?

9 A Yes, sir.

10 Q F: The names and signatures on this contract  
11 are not forged, fictitious, or assumed, and are  
12 true and correct. That was something that  
13 Sunshine was warranting, correct?

14 A Yes, sir.

15 Q None of those things were done, were they?

16 A (No response.)

17 Q In other words, the contract didn't represent a  
18 sale, did it?

19 A No, sir.

20 Q The statements in the contract weren't true and  
21 correct, were they?

22 A No, sir.

23 Q The contract was not valid and enforceable, was  
24 it?

25 A No, sir.

1 Q The names and signatures on the contract were  
2 either forged, fictitious, or assumed, correct?

3 A Yes, sir.

4 Q This paragraph here -- it's under J, it's not  
5 numbered: If any of these warranties is  
6 breached or untrue, seller will upon assignee's  
7 demand purchase this contract from assignee.  
8 You see that?

9 A I hear it, I don't see it.

10 Q Look under J.

11 A I mean, I just can't read it on this. I'm  
12 understanding what you're saying, yes, sir.

13 Q It's on the agreement, isn't it?

14 A Yes, sir.

15 Q And again seller was?

16 A Sunshine Camping Center.

17 Q And assignee was Union Planters?

18 A Yes, sir.

19 Q Now, it says further the purchase shall be in  
20 cash in the amount of the unpaid balance  
21 including finance charges plus the cost and  
22 expenses of assignee, including attorneys fees;  
23 that's what it says?

24 A Yes, sir.

25 Q Did you agree to that on behalf of Sunshine

1           when this contract was assigned to Union  
2           Planters?

3       A     I did, yes, sir.

4       Q     Now, in November was there a second contract --  
5           November of 2002, was there a second contract  
6           bought by the bank reflecting another sale to  
7           Mr. Lawson?

8       A     Yes, sir.

9       Q     Let me show you Exhibit 2 and Exhibit 7.

10           MR. SMITH: Oh, and, Your Honor, we  
11           would offer page 114 if I have not already  
12           done so.

13           THE COURT: I believe it's been  
14           offered.

15           MR. SMITH: Thank you.

16           THE COURT: And admitted.

17           MR. SMITH: I beg your pardon.

18           MR. SHIRLEY: I'm sorry, but what  
19           number is that, page 14 of Number 2?

20           MR. SMITH: Page 114 of Exhibit 1.

21       BY MR. SMITH:

22       Q     You still have page -- excuse me, Exhibit 1  
23           there with you, do you not?

24       A     Yes, sir.

25       Q     Okay. Turn with me to page 83 of Number 1.

(Whereupon, Plaintiff's Exhibit  
Number 1, page 83, was marked  
for identification.)

BY MR. SMITH:

Q Now, what are we looking at? I'm sorry, I'm  
sorry. Stop just a minute.

MR. SMITH: I've gotten confused  
myself here, Mr. Shirley.

MR. SHIRLEY: Well, I'm not  
surprised.

BY MR. SMITH:

Q Exhibit 2 is the one I'd like you to look at.

A Page two?

Q Exhibit 2, page 4.

(Whereupon, Plaintiff's Exhibit  
Number 2, page 4, was marked  
for identification.)

A I've lost track.

Q Let me see if I can help you. Number 2, you  
got -- no, that's not it. Okay. Page 4 of  
Exhibit 2. And my question to you is going to  
be what is that, please?

A It's a buyer's order.

Q For Hubert Lawson?

A Yes, sir.



1 Q Dated November 13, 2002?

2 A Yes, sir.

3 Q Whose handwriting appears on that document?

4 A It's mine.

5 MR. SMITH: Your Honor, we would  
6 offer page 4 of Exhibit 2.

7 THE COURT: It's admitted.

8 (Whereupon, Plaintiff's Exhibit  
9 Number 2, page 4, was admitted  
10 into evidence.)

11 BY MR. SMITH:

12 Q Now, this shows, does it not, that Mr. Lawson  
13 was buying a 2003 All American; is that  
14 correct?

15 A Yes, sir.

16 Q And an all American is a type of recreational  
17 vehicle, isn't it?

18 A Yes, sir.

19 Q But he wasn't really, was he?

20 A No, sir.

21 Q And it shows that this sale was going to be for  
22 \$29,252, correct?

23 A Yes, sir.

24 Q And there was a trade allowance of \$21,000?

25 A Yes, sir.

1 Q What was that supposed to represent?

2 A The other vehicle.

3 Q The trade-in of the one that was supposedly

4 bought back in September of '02?

5 A Yes, sir.

6 Q And it shows here on this line, balance owing

7 on trade. You see that?

8 A Yes, sir.

9 Q What was that representing?

10 A The payoff on the first one.

11 Q On this one from September 17?

12 A Yes, sir.

13 Q Now, have you made some payments in

14 Mr. Lawson's name on this loan in September?

15 A Yes, sir.

16 Q Whatever payments you had made it reduced the

17 balance of that \$18,500 or so down to

18 18,284.56, correct?

19 A Yes, sir.

20 Q But that was money that had already been

21 advanced to Sunshine, correct?

22 A Yes, sir.

23 Q So the total price was going to be \$26,800.62,

24 correct?

25 A Yes, sir.

1 Q Now, and at the bottom of the page, the  
2 signature. That's your signature here under  
3 dealer's authorized representative, isn't it?

4 A Yes, sir.

5 Q And you were an authorized representative of  
6 Sunshine when you signed your name here,  
7 weren't you?

8 A I worked for them, yes, sir.

9 Q And you signed Hubert Lawson's name on the  
10 purchaser's signature, didn't you?

11 A Yes, sir.

12 Q Did you send that to Sunshine? I mean, I'm  
13 sorry, to Union Planters?

14 A Yes, sir.

15 (Whereupon, Plaintiff's Exhibit  
16 Number 2, page 1, was marked  
17 for identification.)

18 Q Turn to page 1 of the exhibit. Do you  
19 recognize that?

20 A Yes, sir.

21 Q Tell us what that is.

22 A Credit application.

23 Q Whose handwriting appears on that?

24 A Mine.

25 MR. SMITH: Your Honor, we would

1 offer page 1 of Exhibit 2.

2 THE COURT: It's admitted.

3 (Whereupon, Plaintiff's Exhibit  
4 Number 2, page 1, was admitted  
5 into evidence.)

6 BY MR. SMITH:

7 Q Signature here, Hubert Lawson, you signed that,  
8 didn't you?

9 A Yes, sir.

10 Q And was this along with the page that we just  
11 looked at, page 4, was that sent to Sunshine --  
12 I mean, sent to Union Planters?

13 A Yes, sir.

14 Q Did you send it?

15 A Yes, sir.

16 Q Did you get a response back from Union  
17 Planters?

18 A I'm sure I did.

19 Q Look at page 161 of Exhibit 7, this one right  
20 here.

21 (Whereupon, Plaintiff's Exhibit  
22 Number 7, page 161, was marked  
23 for identification.)

24 A 161?

25 Q Yes, sir, 161.

1 A I don't have it in this. Hang on a second.

2 Q If there's some paper clips there, just feel  
3 free to pull them off. That's for my benefit.

4 A I'm there.

5 Q You there? Do you recognize that?

6 A Yes, sir.

7 Q Tell us what that is.

8 A It's approval letter.

9 Q And was that on this second Lawson deal of  
10 November 13, 2002?

11 A Yes, sir.

12 Q It come from Dale York?

13 A Yes, sir.

14 MR. SMITH: Your Honor, we would  
15 offer that.

16 THE COURT: It's admitted.

17 (Whereupon, Plaintiff's Exhibit  
18 Number 7, page 161, was  
19 admitted into evidence.)

20 BY MR. SMITH:

21 Q According to this document, Mr. York was  
22 telling you that Mr. Lawson was approved for a  
23 \$26,800.62 loan; is that correct?

24 A Yes, sir.

25 Q Now, would it be true that part of that amount

1           that was being borrowed in this loan would go  
2           to pay off the amount loaned on this first one?

3       A     Yes, sir.

4       Q     But that was still money that the bank had  
5           advanced, would that be true?

6       A     Yes, sir.

7       Q     And you believed that Mr. York made his  
8           decision to approve this based on the  
9           information contained in the financing  
10          documents you sent?

11                   MR. SHIRLEY: I object to that unless  
12                   he knows what Mr. York did. That's a  
13                   conclusion; that's a question of fact.  
14                   Unless he has personal knowledge, it would  
15                   be inappropriate. It would be an  
16                   assumption without predication.

17                   THE COURT: I overrule as to what he  
18                   believed was being done.

19       BY MR. SMITH:

20       Q     You may answer.

21       A     That was standard procedure, yes, sir.

22       Q     And it was standard procedure for this first  
23           Lawson deal, too, wasn't it?

24       A     Yes, sir.

25       Q     Because it was Sunshine that was getting the

1 information together for the bank so that the  
2 bank could make a decision: Do we loan this  
3 money or not loan the money. Would that be  
4 fair to say?

5 A Yes, sir.

6 Q Exhibit 2 again, please, sir. Need you to look  
7 at Exhibit 2 again. I'd like you to look at  
8 page 2.

9 (Whereupon, Plaintiff's Exhibit  
10 Number 2, pages 2 and 3, were  
11 marked for identification.)

12 BY MR. SMITH:

13 Q You there?

14 A Yes, sir.

15 Q And is that the retail installment contract and  
16 security agreement for this second Lawson deal?

17 A Yes, sir.

18 Q Who's handwriting appears on that?

19 A It's my signatures.

20 Q You signed Hubert Lawson?

21 A Yes, sir.

22 Q Is page 3 the back side?

23 A Yes, sir.

24 MR. SMITH: Your Honor, we'd offer  
25 pages 2 and 3 of Exhibit 2.

1 THE COURT: They're admitted.  
2 (Whereupon, Plaintiff's Exhibit  
3 Number 2, pages 2 and 3, were  
4 admitted into evidence.)

5 BY MR. SMITH:

6 Q This shows \$26,800.62 being paid, correct?

7 A Yes, sir.

8 Q And it shows 18,284.56 being paid to Union  
9 Planters Bank, correct?

10 A Yes, sir.

11 Q And then the signature here at the bottom?

12 A Yes, sir.

13 Q Hubert Lawson, you signed that, didn't you?

14 A Yes, sir.

15 Q And then this assignment of contract, you  
16 signed that, didn't you?

17 A Yes, sir.

18 Q And the next page, page 3 of that contract  
19 includes this language here, assignment by  
20 seller, that we spent sometime reviewing just a  
21 little while ago, correct?

22 A Yes, sir.

23 Q Makes those same warranties, A through J?

24 A Yes, sir.

25 Q Same thing, if any of these warranties is



1           breached or untrue, seller will upon assignee's  
2           demand purchase this contract?

3       A     Yes, sir.

4       Q     Monies received by Sunshine from this  
5           assignment?

6       A     Yes, sir.

7       Q     You still have Exhibit 7 with you?

8       A     Yes, sir.

9       Q     Was that yes?

10      A     Yes, sir.

11      Q     Okay. Turn with me to page 163.

12                               (Whereupon, Plaintiff's Exhibit  
13                               Number 7, page 163, was marked  
14                               for identification.)

15      BY MR. SMITH:

16      Q     Do you recognize that check?

17      A     Yes, sir.

18      Q     What is it for?

19      A     The second deal.

20                               MR. SMITH: Your Honor, we would  
21                               offer that page.

22                               THE COURT: It's admitted.

23                               (Whereupon, Plaintiff's Exhibit  
24                               Number 7, page 163, was  
25                               admitted into evidence.)

1 BY MR. SMITH:

2 Q Now, this check is for \$8,516.06, correct?

3 A Yes, sir.

4 Q Now, that's not for that entire \$26,000  
5 purchase price, was it?

6 A No, sir.

7 Q Can you tell us again why this check is not for  
8 that entire \$26,000 purchase price?

9 A Union Planters always backed the payoff out.

10 Q So the money that was used to pay off this loan  
11 came from this deal here, correct?

12 A Yes, sir.

13 Q But there was really \$26,000 owed according to  
14 the paperwork; is that right?

15 A Yes, sir.

16 Q On this one, the second one?

17 A Yes, sir.

18 Q But the first one, because of the second one,  
19 was paid off?

20 A Yes, sir.

21 Q Okay. So even though the check's for only  
22 \$8500 there's really about \$26,000 that the  
23 bank has paid?

24 A Yes, sir.

25 Q And was this check deposited in Sunshine's

1 account with CB&T?

2 A I don't believe so, no, sir.

3 Q Isn't that the CB&T account number?

4 A I'm not 100 percent sure.

5 Q Okay. That's fine. And there was a finders  
6 fee paid on this contract, too, wasn't there?

7 A Yes, sir.

8 Q And is that on page 164 of Exhibit 7?

9 A Yes, sir.

10 MR. SMITH: Your Honor, we'd offer  
11 that.

12 THE COURT: It's admitted.

13 MR. SHIRLEY: What page of that, I'm  
14 sorry?

15 MR. SMITH: 164 of Exhibit 7.

16 MR. SHIRLEY: Thank you.

17 MR. SMITH: Very simple.

18 (Whereupon, Plaintiff's Exhibit  
19 Number 7, page 164, was marked  
20 for identification and admitted  
21 into evidence.)

22 BY MR. SMITH:

23 Q \$1,340.03 paid as a finders fee?

24 A Yes, sir.

25 Q That was money that Union Planters would not

1 have paid to Sunshine but for this deal?

2 A Yes, sir.

3 Q And was that check deposited in Sunshine's  
4 account with CB&T?

5 A I don't know.

6 Q Did you make payments on this deal as well?

7 A Yes, sir.

8 Q Do you know how much you paid?

9 A No, sir.

10 Q I want to talk to you about the date of  
11 April 2, 2003. Do you still have Exhibit 11  
12 there with you? I'm sorry, Exhibit 13 there  
13 with you?

14 A Yes, sir.

15 Q Turn with me to page 28.

16 (Whereupon, Plaintiff's Exhibit  
17 Number 13, page 28 was marked  
18 for identification.)

19 BY MR. SMITH:

20 Q Do you have it?

21 A Yes, sir.

22 Q All right. What are we looking at there?

23 A Looks like some minutes or something that I  
24 sold the rest of the shares to Comber or gave  
25 them to him.

1 MR. SMITH: Your Honor, we'd offer  
2 page 28 of Exhibit 13.

3 THE COURT: Admitted.

4 (Whereupon, Plaintiff's Exhibit  
5 Number 13, page 28, was  
6 admitted into evidence.)

7 BY MR. SMITH:

8 Q Why did you transfer to Comber Borland -- let  
9 me start over. On April 2, 2003, would it be  
10 true that the only -- that you only owned 245  
11 shares in Sunshine Camping Center?

12 A Yes, sir.

13 Q That was your whole interest in the  
14 corporation; is that right?

15 A Yes, sir.

16 Q And you transferred that to Mr. Borland on  
17 April 2, 2003, correct?

18 A Yes, sir.

19 Q Tell the members of the jury why you did that,  
20 please.

21 A I don't remember the exact reason. I know  
22 Comber's -- I think his father-in-law was gonna  
23 help him a little bit more if I was out of the  
24 picture as far as any kind of ownership.  
25 Agreed to sign that over. And still, best I

1           can remember, is paying the money that I still  
2           owed him.

3       Q       \$15,000?

4       A       Yes, sir.

5       Q       In fact, you executed another note on that  
6           date, didn't you, for \$15,000?

7       A       I believe so, yes, sir.

8       Q       All right. Look at page 30 and 31 of the  
9           exhibit.

10                               (Whereupon, Plaintiff's Exhibit  
11                               Number 13, pages 30 and 31,  
12                               were marked for  
13                               identification.)

14       BY MR. SMITH:

15       Q       Is that the note you signed?

16       A       Yes, sir.

17                               MR. SMITH: Your Honor, we'd offer  
18                               those two pages, 30 and 31, of  
19                               Exhibit 7 -- or Exhibit 13.

20                               THE COURT: They're admitted.

21                               (Whereupon, Plaintiff's Exhibit  
22                               Number 13, pages 30 and 31,  
23                               were admitted into evidence.)

24       BY MR. SMITH:

25       Q       Now, you had signed a note back in August of

1 2002 for \$15,000, correct?

2 A Yes, sir.

3 Q Was the one that you signed here on April 2,  
4 was that in addition to the first one?

5 A No, sir.

6 Q Was it in lieu of the first one?

7 A Yes, sir.

8 Q Was the first one paid off?

9 A No, sir.

10 Q So --

11 A Other than the collateral of my shares I gave  
12 to him.

13 Q Okay. So --

14 A But I still agreed to pay \$15,000.

15 Q So wasn't any new monies advanced; is that  
16 right?

17 A Best of my knowledge, no, sir.

18 Q Okay. Was that note ever paid off?

19 A Yes, sir.

20 Q How was it paid off?

21 A Cashier's check.

22 Q Where did the money from the cashier's check  
23 come from?

24 A From the deposit at CB&T.

25 Q Was that after April 2, 2003?

1 A Yes, sir.

2 Q Where did the money come from that went into  
3 the deposit of CB&T that was used to pay off  
4 that second loan?

5 A A contract.

6 Q Do you remember who the contract was with?

7 A Union Planters.

8 Q Do you remember who the person was that was  
9 shown to be the buyer on that contract?

10 A Dorothy Peters.

11 Q Make sure I understand. This note we're  
12 looking at dated April 2, 2003, was paid off;  
13 is that right?

14 A Yes, sir.

15 Q Paid off by money that came from Union  
16 Planters?

17 A Yes, sir.

18 Q Into Sunshine's account?

19 A Yes, sir.

20 Q On a contract by a lady named Dorothy Peters?

21 A Yes, sir.

22 Q And that was several months after this date;  
23 would that be true?

24 A I don't know the exact date but it was.

25 Q We'll talk about that in a minute. So when you



1 transferred your shares on April 2, Mr. Borland  
2 had a hundred percent of the value of the  
3 corporation, a hundred percent of the shares?

4 A Yes, sir.

5 Q All right. I want to ask you about a gentleman  
6 named Robert McAllister, Bobby McAllister.  
7 Turn with me to page 83 of Exhibit 1.

8 A I'm there.

9 Q Okay. What is that?

10 A Buyer's order.

11 Q And it's dated what?

12 A Question again, I'm sorry?

13 Q And it's dated what?

14 A Oh, I'm sorry, 2/19/2003.

15 MR. SMITH: Your Honor, we'd offer  
16 page 83.

17 THE COURT: It's admitted.

18 (Whereupon, Plaintiff's Exhibit  
19 Number 1, page 83, was admitted  
20 into evidence.)

21 BY MR. SMITH:

22 Q Now, is your handwriting on this document?

23 A Yes, sir.

24 Q Did Mr. McAllister come into Sunshine on or  
25 about February 19, 2003?

1 A I believe so, yes, sir.

2 Q Was he interested in buying a camper at that  
3 time?

4 A Yes, sir.

5 Q Did he give you certain information  
6 regarding -- strike that. And was the camper  
7 he was interested in buying this 2003 Salem?

8 A Yes, sir.

9 Q Did he give you certain information so -- to  
10 use to see whether he'd be approved for  
11 financing to buy that camper?

12 A Yes, sir.

13 Q Including his Social Security number?

14 A Yes, sir.

15 Q Just a minute, let me step back, I'm sorry. On  
16 these Lawson contracts did you put Mr. Lawson's  
17 Social Security number on those contracts?

18 A Not on the contracts.

19 Q Okay. But on those financing documents?

20 A Only document it goes on is the credit ap.

21 Q Credit ap? And was the Social Security number  
22 you put down on Mr. Lawson's credit application  
23 his Social Security number?

24 A On the first one it was. On the second one  
25 they're telling me there was one that was off.

1 Not intentionally, but.

2 Q Where did you get the Social Security number?

3 A It was kind of easy accessible with him.

4 Q And then Mr. McAllister in February of 2003  
5 gave you his Social Security number; would that  
6 be true?

7 A Yes, sir.

8 Q And did you attempt to get financing for him in  
9 February of 2003 for this 2003 Salem?

10 A I believe so, yes, sir.

11 Q And then ultimately Mr. McAllister -- well, he  
12 was approved for financing, wasn't he?

13 A Yes, sir.

14 Q But he decided not to buy in February, didn't  
15 he?

16 A Yes, sir.

17 Q Would it be true that you took the information  
18 he gave you in February and then submitted  
19 another false application to Union Planters in  
20 June of 2003?

21 A Yes, sir.

22 Q Turn with me to page 39 of Exhibit 1.

23 A I'm there.

24 (Whereupon, Plaintiff's Exhibit  
25 Number 1, page 39, was marked

1 for identification.)

2 BY MR. SMITH:

3 Q You recognize that?

4 A Yes, sir.

5 Q Is your handwriting on that document?

6 A Yes, sir.

7 MR. SMITH: Your Honor, we'd offer  
8 page 39 of Exhibit 1.

9 THE COURT: Admitted.

10 (Whereupon, Plaintiff's Exhibit  
11 Number 1, page 39, was admitted  
12 into evidence.)

13 BY MR. SMITH:

14 Q This is another purchase order, isn't it, or is  
15 this a credit ap?

16 A Credit application.

17 Q There's a signature, Robert M. McAllister, at  
18 the bottom here, correct?

19 A Yes, sir.

20 Q You signed that, didn't you?

21 A Yes, sir.

22 Q Was that sent to Union Planters?

23 A Yes, sir.

24 Q Turn with me to page 40.

25 (Whereupon, Plaintiff's Exhibit

Number 1, page 40, was marked  
for identification.)

BY MR. SMITH:

Q And is that the buyer's order that you created?

A Yes, sir.

MR. SMITH: Your Honor, we'd offer  
page 40 of Exhibit 1.

THE COURT: Admitted.

(Whereupon, Plaintiff's Exhibit  
Number 1, page 40, was admitted  
into evidence.)

BY MR. SMITH:

Q Now, this shows that Mr. McAllister was buying that Salem, correct?

A Yes, sir.

Q Sales price was gonna be, what, \$21,700?

A Yes, sir.

Q And the amount financed was going to be what?

A Looks like 19,000.

Q Okay. And signatures, the signature there for Mr. McAllister, you signed that, didn't you?

A Yes, sir.

Q But the dealers authorized representative you signed, didn't you?

A Yes, sir.

1 Q And you were an authorized representative for  
2 Sunshine when you signed that document?

3 A Yes, sir.

4 Q And that was sent to the bank as well, wasn't  
5 it?

6 A Yes, sir.

7 Q And based on that information that you sent,  
8 the bank approved financing for that sale that  
9 was represented by those documents, didn't it?

10 MR. SHIRLEY: Object to the form. No  
11 predicate.

12 THE COURT: I overrule.

13 BY MR. SMITH:

14 Q You may answer.

15 A Yes, sir.

16 Q Turn with me to page 61 of Exhibit 1.

17 (Whereupon, Plaintiff's Exhibit  
18 Number 1, page 61, was marked  
19 for identification.)

20 MR. SHIRLEY: I'm sorry I didn't hear  
21 what you said.

22 MR. SMITH: Page 61 of Exhibit 1.

23 MR. SHIRLEY: Thank you.

24 BY MR. SMITH:

25 Q Is that the approval form?

1 A Yes, sir.

2 MR. SMITH: Your Honor, we'd offer  
3 page 61.

4 THE COURT: It's admitted.

5 (Whereupon, Plaintiff's Exhibit  
6 Number 1, page 61, was admitted  
7 into evidence.)

8 BY MR. SMITH:

9 Q By this, Mr. York was telling you at Sunshine  
10 Camping Center that Mr. McAllister, for this  
11 June 2003 contract, had been approved?

12 A Yes, sir.

13 Q The amount financed was going to be \$18,800,  
14 correct?

15 A Yes, sir.

16 Q Now, did Sunshine then submit a credit  
17 application -- or strike that. Did Sunshine  
18 then -- strike that. Was a contract then  
19 prepared reflecting the financing of that sale  
20 of \$18,800?

21 A Yes, sir.

22 Q Turn to page 36 of the exhibit if you will.  
23 Number 1.

24 MR. SMITH: Exhibit 1, Mr. Shirley,  
25 page 36.

1 MR. SHIRLEY: I've got a vent that's  
2 blowing over my head. I don't mean to be  
3 disruptive.

4 MR. SMITH: Just want to make sure  
5 we're not confused.

6 BY MR. SMITH:

7 Q Does page 36 and 37 of the exhibit represent  
8 the front and back of the retail installment  
9 contract and security agreement for this  
10 McAllister deal of June 2003?

11 A Yes, sir.

12 (Whereupon, Plaintiff's Exhibit  
13 Number 1, pages 36 and 37, were  
14 marked for identification.)

15 BY MR. SMITH:

16 Q It shows that the amount financed was going to  
17 be \$19,000 even, correct?

18 A Yes, sir.

19 Q And then you signed Mr. McAllister's name to  
20 that document, didn't you?

21 A Yes, sir.

22 Q And there was not a sale, though, was there?

23 A No, sir.

24 Q Then you signed the assignment to Union  
25 Planters bank there, correct?



1 A Yes, sir.

2 Q And you were at that time authorized by  
3 Sunshine to sign contracts like this?

4 A Yes, sir.

5 Q Again let's look at the second page, the back  
6 of it where we see assignment by seller again.  
7 We see the seller warrants A through J there,  
8 don't we?

9 A Yes, sir.

10 Q Seller again was Sunshine, wasn't it?

11 A Yes, sir.

12 Q The assignee was Union Planters Bank, correct?

13 A Yes, sir.

14 Q There's this same language about if any of  
15 these warranties are breached or untrue, seller  
16 will upon assignee's demand purchase this  
17 contract from assignee, correct?

18 A Yes, sir.

19 Q Now, did the bank pay monies for this contract?

20 A Yes, sir.

21 Q Turn to page 127 of Exhibit 7. I'm sorry, turn  
22 to page 128 of Exhibit 7.

23 (Whereupon, Plaintiff's Exhibit  
24 Number 7, page 128, was marked  
25 for identification.)

1 A I'm there.

2 Q Okay. Do you recognize that as the \$19,000  
3 check for this McAllister deal?

4 A Yes, sir.

5 MR. SMITH: Your Honor, we'd offer  
6 that.

7 THE COURT: Admitted.

8 (Whereupon, Plaintiff's Exhibit  
9 Number 7, page 128, was  
10 admitted into evidence.)

11 BY MR. SMITH:

12 Q Was that check delivered to Sunshine Camping  
13 Center?

14 A Yes, sir.

15 Q And what was done with it?

16 A Put into, looks like, my bank.

17 Q Into your bank?

18 A Yes, sir.

19 Q How would Union Planters get this information  
20 to or get these checks to Sunshine? Would they  
21 mail them?

22 A Fed-Ex.

23 Q Fed-Ex. And turn with me now to page 127.

24 (Whereupon, Plaintiff's Exhibit  
25 Number 7, page 127, was marked

for identification.)

BY MR. SMITH:

Q Of Exhibit 7. And what are we looking at there?

A Looks like the finders fee.

Q For the?

A McAllister.

Q McAllister?

MR. SMITH: Your Honor, we would offer page 127.

THE COURT: It's admitted.

(Whereupon, Plaintiff's Exhibit Number 7, page 127, was admitted into evidence.)

BY MR. SMITH:

Q And that was for \$1,140?

A Yes, sir.

Q And what was done with that check?

A Looks like it's my account, too.

Q Now, that finders fee would not have been paid again but for this false McAllister deal; would that be correct?

A Yes, sir.

Q Did you make payments on Mr. McAllister's or the loan that was in Mr. McAllister's name?

1 A Yes, sir.

2 Q Do you know how much?

3 A No, sir.

4 Q Let me show you Exhibit Number 3. Turn with me  
5 to page 4 of that document.

6 (Whereupon, Plaintiff's Exhibit  
7 Number 3, page 4, was marked  
8 for identification.)

9 A I'm there.

10 Q Do you recognize that?

11 A Yes, sir.

12 Q What is that?

13 A Buyer's order.

14 Q Who is the person that is shown as the buyer on  
15 that buyer's order?

16 A Dorothy Peters.

17 Q Now, I failed to ask you this. Mr. McAllister  
18 is no relation to you, he's just a attempted  
19 customer; is that right?

20 A Yes, sir.

21 Q Does Ms. Peters have any sort of relation to  
22 you?

23 A Mother-in-law.

24 MR. SMITH: Your Honor, we'd offer  
25 page 4 of Exhibit 3.

1 THE COURT: Admitted.

2 (Whereupon, Plaintiff's Exhibit  
3 Number 3, page 4, was admitted  
4 into evidence.)

5 BY MR. SMITH:

6 Q Now, this shows that Ms. Peters was buying what  
7 type of vehicle?

8 A A motor home.

9 Q Sunseeker?

10 A Yes, sir.

11 Q What was the purchase price going to be, total  
12 selling price?

13 A Looks like 48. I can't read the rest of it.

14 Q Okay. Maybe forty-eight five hundred?

15 A That looks like it.

16 Q What does it show the amount that's being  
17 financed was?

18 A 45,171.53.

19 Q And did you fill in all this information on  
20 this document?

21 A Yes, sir.

22 Q And at the bottom where there is this signature  
23 over purchaser's signature, did you sign the  
24 name Dorothy Peters to that?

25 A Yes, sir.

1 Q That document does not represent a sale, does  
2 it?

3 A No, sir.

4 Q Did Ms. Peters know that you were signing that  
5 document?

6 A No, sir.

7 Q Was that document provided to Union Planters?

8 A Yes, sir.

9 Q Turn with me to page 3 of Exhibit 3.

10 (Whereupon, Plaintiff's Exhibit  
11 Number 3, page 3, was marked  
12 for identification.)

13 BY MR. SMITH:

14 Q My question is what is that?

15 A Credit application.

16 Q For Ms. Peters for this July 15, 2003, deal?

17 A Yes, sir.

18 MR. SMITH: Your Honor, we'd offer  
19 that.

20 THE COURT: It's admitted.

21 (Whereupon, Plaintiff's Exhibit  
22 Number 3, page 3, was admitted  
23 into evidence.)

24 BY MR. SMITH:

25 Q Is all the handwriting on that document yours?

1 A Yes, sir.

2 Q Is this Ms. Peters's Social Security number?

3 A Yes, sir.

4 Q How did you obtain that Social Security number?

5 A I forget how exactly I got it.

6 Q But it is her accurate Social Security number?

7 A Yes, sir.

8 Q Where it says applicant's signature here, did  
9 you sign that?

10 A Yes, sir.

11 Q You signed Dorothy Peters?

12 A Yes, sir.

13 Q Was that provided to Union Planters?

14 A Yes, sir.

15 Q Did Union Planters approve a sale to Ms. Peters  
16 under the terms that were reflected in those  
17 documents?

18 A Yes, sir.

19 Q Do you have Exhibit 7 there with you still?

20 A Yes, sir.

21 Q I call your attention to page 139.

22 (Whereupon, Plaintiff's Exhibit  
23 Number 7, page 139, was marked  
24 for identification.)

25 A I'm there.

1 Q Do you recognize that?

2 A No, sir.

3 Q Okay. Well, did you receive information from  
4 Union Planters that Ms. Peters was approved?

5 A Yes, sir.

6 Q And was that from Dale York?

7 A Yes, sir.

8 Q And after receiving that information did you  
9 create a retail installment contract and  
10 security agreement in Ms. Peters's name?

11 A Yes, sir.

12 Q Turn with me to page 1 of Exhibit 3, 1 and 2  
13 actually.

14 (Whereupon, Plaintiff's Exhibit  
15 Number 3, pages 1 and 2, were  
16 marked for identification.)

17 A I'm there.

18 Q And is that the retail installment contract and  
19 security agreement for the Peters deal?

20 A Yes, sir.

21 MR. SMITH: Your Honor, we'd offer  
22 pages 1 and 2 of Exhibit 3.

23 THE COURT: It's admitted.

24 (Whereupon, Plaintiff's Exhibit  
25 Number 3, pages 1 and 2, were



1 admitted into evidence.)

2 BY MR. SMITH:

3 Q And the information contained in this document  
4 you put in, would that be correct?

5 A Yes, sir.

6 Q It shows that there was going to be \$45,171.50  
7 financed; is that correct?

8 A Yes, sir.

9 Q And you signed the name Dorothy Peters here?

10 A Yes, sir.

11 Q Now, you didn't -- let's see. Got cut off on  
12 my overhead, but did you sign this assignment  
13 to Union Planters Bank here?

14 A Yes, sir.

15 Q And were you authorized by Sunshine to assign  
16 financing contracts when you did that?

17 A Yes, sir.

18 Q And did the bank provide both a check for the  
19 amount financed and a finders fee for this  
20 retail installment contract and security  
21 agreement?

22 A Wasn't a check, no, sir.

23 Q Wasn't a check? You're right. Did this  
24 contract that we just looked at for the Peters  
25 deal, did it contain this assignment by seller?

1 A Yes, sir.

2 Q Had these warranties A through J?

3 A Yes, sir.

4 Q Had these if any of these warranties is  
5 breached or untrue seller will upon assignee's  
6 demand purchase this contract from assignee?

7 A Yes, sir.

8 Q And those things A through J that are required  
9 there, those weren't done with regard to Peters  
10 at least from Sunshine's end?

11 A No, sir.

12 Q Now, you mentioned that there wasn't a check  
13 for the Peters deal; is that correct?

14 A Yes, sir.

15 Q Did Sunshine Camping Center receive any money  
16 for the Peters deal?

17 A Yes, sir.

18 Q Do you know how much was received?

19 A Not exactly, no, sir.

20 Q Let me show you a document marked as  
21 Exhibit 10.

22 (Whereupon, Plaintiff's Exhibit  
23 Number 10 was marked for  
24 identification.)

25 BY MR. SMITH:

1 Q Have you ever seen that before?

2 A No, sir.

3 Q All right. Do you still have Exhibit 7 with  
4 you?

5 A Yes, sir.

6 Q Turn with me to page 142.

7 (Whereupon, Plaintiff's Exhibit  
8 Number 7, page 142, was marked  
9 for identification.)

10 A Okay.

11 Q Have you ever seen that document before?

12 A No, sir.

13 Q I will ask you did Union Planters direct  
14 deposit some money into Sunshine's account at  
15 CB&T as a result of this Peters deal?

16 A Yes, sir.

17 Q And was the amount that was direct deposited  
18 \$45,171.50?

19 A Yes, sir.

20 Q That was for the amount financed; is that  
21 correct?

22 A Yes, sir.

23 Q And was \$2,710.29 paid in as a commission?

24 A Yes, sir.

25 Q And that went into Sunshine's account at CB&T;

1 is that correct?

2 A Yes, sir.

3 Q And you've told us previously that some portion  
4 of that almost -- almost \$48,000 that Union  
5 Planters paid in was used to pay off this  
6 note --

7 A Yes, sir.

8 Q -- for Mr. Borland; is that correct?

9 A Yes, sir.

10 Q Mr. Borland know that that money came out of a  
11 Sunshine account to pay off this note?

12 A He knew it came out of the account, yes.

13 MR. SMITH: Just a minute, Your  
14 Honor, I may be through.

15 BY MR. SMITH:

16 Q You stopped working for Sunshine when?

17 A January of '04.

18 Q And why did you leave Sunshine's employment in  
19 January of '04?

20 A Pretty much got fired.

21 Q Who fired you?

22 A Comber.

23 Q Do you know why he fired you?

24 A I wrote a check.

25 Q On a Sunshine account?

1 A On a CB&T account.

2 Q That you weren't authorized to do?

3 A Right.

4 Q So Mr. Borland at that time fired you; is that  
5 right?

6 A Yes, sir.

7 Q After that date would you have had anything to  
8 do with the operation of the company?

9 A No, sir.

10 Q Are you aware of any demand that Union Planters  
11 Bank placed on Sunshine to repay the monies  
12 from the Peters, McAllister, and Lawson deals?

13 A No, sir.

14 Q Do you know whether Sunshine has paid those  
15 monies back?

16 A No, sir.

17 Q Have you paid those monies back?

18 A No, sir.

19 Q Do you believe that Union Planters could have  
20 gotten those monies from Ms. Peters, Mr.  
21 McAllister, and Mr. Lawson?

22 A Payoffs?

23 MR. SHIRLEY: Excuse me, I didn't  
24 hear the question. I'm sorry.

25 BY MR. SMITH:

1 Q Do you believe that Union Planters could have  
2 gotten the monies from Ms. Peters, Mr.  
3 McAllister, and Mr. Lawson, the payoffs?

4 A No, sir.

5 Q Why not?

6 A It wasn't their debt.

7 Q Do you recall -- my final point. Do you recall  
8 when it was this promissory note, the one from  
9 April of '03, was paid off? When was it paid  
10 off?

11 A Right after the Peters deal came into the bank.

12 Q Before you were fired.

13 A Yeah.

14 Q So sometime around August of 2003?

15 A It was July or August -- July sometime.

16 Q I'm just gonna put plus or minus. And that was  
17 a note -- that note that was paid off with the  
18 money from Sunshine's account, that was a note  
19 that you owed in -- you individually owed to  
20 Mr. Borland individually, correct?

21 A Well, Sunshine Camping Center.

22 Q Well, it says in favor of Comber Borland.  
23 That's what the note says, isn't it?

24 A Yes, sir.

25 Q I believe those are all my questions for you,

1 Mr. Williams, thank you.

2 THE COURT: Okay. Ladies and  
3 gentlemen, I believe this is gonna be a  
4 place where we need to take our recess for  
5 lunch. So for that reason I'm going to  
6 excuse you at this time and ask that you  
7 be back in the jury room at 1:15, and  
8 we'll try to get started promptly at that  
9 time. So I'll allow you at this time to  
10 go with the bailiff. And I don't know if  
11 you may have left anything in the jury  
12 room. Just go out that way and you may  
13 leave the premises and be back in the jury  
14 room at 1:15.

15 (The jury left the courtroom.)

16 THE COURT: Okay. We will probably  
17 lock the courtroom during lunch recess so  
18 if there's anything you need to have  
19 during that time, you probably ought to  
20 get it now.

21 MR. SMITH: Your Honor, we offer  
22 pages 36 and 37 of Exhibit --

23 THE COURT: Hold on just a minute  
24 until Mr. Shirley gets back. He had to  
25 step out.

1 (Pause in the Proceedings.)

2 MR. SHIRLEY: Thank you.

3 MR. SMITH: Your Honor, during my  
4 questioning of Mr. Williams I referred to,  
5 and I put on the overhead I remember,  
6 pages 36 and 37 of Exhibit 1; that was the  
7 McAllister contract. And our reporter has  
8 informed me that I failed to offer those  
9 documents at that time. So I do offer  
10 pages 36 and 37 of Exhibit 1 at this time.

11 THE COURT: They'll be admitted.

12 (Whereupon, Plaintiff's Exhibit  
13 Number 1, pages 36 and 37, were  
14 admitted into evidence.)

15 (Break in the proceedings.)

16 THE COURT: Can we bring the jury?  
17 Anything we need to address before we do?

18 MR. SMITH: I don't think so, Your  
19 Honor.

20 (The jury entered the  
21 courtroom.)

22 CROSS-EXAMINATION

23 BY MR. SHIRLEY:

24 Q Mr. Williams, you know that I'm Merrill  
25 Shirley. Possibly you know I'm an attorney?



1 A Yes, sir.

2 Q You know that I represent Sunshine?

3 A Yes, sir.

4 (Whereupon, Defendant Sunshine's  
5 Exhibit B was marked for  
6 identification.)

7 BY MR. SHIRLEY:

8 Q What I've done, sir, is I have made some  
9 copies, and at the bottom here you'll see it's  
10 Defendant's Exhibit B. And you'll see to the  
11 right that it says Exhibit 2, which is what I  
12 believe to be the document that you've  
13 previously testified to. And by way of  
14 reference, Exhibit 2 would be the Hubert  
15 Lawson, III, and this is dated on the 11<sup>th</sup>  
16 and 13<sup>th</sup>, '02. You remember that day from  
17 the chronology and your documentation, right?

18 A Yes, sir.

19 (Whereupon, Defendant Sunshine's  
20 Exhibit C was marked for  
21 identification.)

22 BY MR. SHIRLEY:

23 Q This is Defendant's Exhibit C that came from  
24 that exhibit or another exhibit, and this  
25 appears to be an Alabama Department of Revenue

1 application -- title for application that shows  
2 it's on Mr. Lawson. It shows that the lien  
3 holder is Union Planters, and it shows Sunshine  
4 typed on there. This is a document that you  
5 prepared as well, is it not?

6 A Yes, sir.

7 Q And it -- there is also another document in  
8 existence that says when the lien title  
9 documentation is to be sent to Union Planters  
10 at the time frame that we're talking about, you  
11 told them you'd be responsible for getting them  
12 a title, didn't you?

13 A Yes, sir.

14 (Whereupon, Defendant Sunshine's  
15 Exhibit D was marked for  
16 identification.)

17 BY MR. SHIRLEY:

18 Q Defendant's Exhibit D -- and you may have to  
19 help me. Read the name on the top there.

20 A Dorothy Peters.

21 Q And that's -- document has been previously  
22 identified as another exhibit. This is just a  
23 true copy of it, isn't it?

24 A Yes, sir.

25 (Whereupon, Defendant Sunshine's

Exhibit E was marked for  
identification.)

BY MR. SHIRLEY:

Q And also Defendant's Exhibit E is the same type  
of documentation for application for a title to  
the property that's supposed to be security,  
correct?

A Yes, sir.

Q You completed that, didn't you?

A Yes, sir.

Q And can you look on there and tell me between  
Defendant's Exhibit E and Defendant's Exhibit C  
where the title is supposed to be mailed?

A To Union Planters Bank.

Q What's the address?

A One's 44 Business Park 3, and one --

Q Wait a minute, Nashville?

A One's Nashville and this other one I can't  
really read.

Q So there's one that you sent in that didn't  
have the correct information about where the  
title was even supposed to be sent, was it?

MR. SMITH: Objection, Your Honor,  
lack of foundation.

BY MR. SHIRLEY:

1 Q You see it --

2 THE COURT: I sustain. I sustain.

3 BY MR. SHIRLEY:

4 Q Well, sir, you completed this, did you not?

5 A Yes, sir.

6 Q And you're telling us you can't read it to show  
7 where it was supposed to be delivered, are you  
8 not?

9 A I can't read this one --

10 Q Right.

11 A -- because it's too light.

12 Q And then are you saying that Nashville and the  
13 correct address is used or is there two  
14 different addresses on here?

15 A They have changed before in the past where you  
16 mail the title to.

17 Q Do you know if that was the correct address  
18 where to mail the title to when you completed  
19 those documents?

20 A Union Planters never really funded a deal  
21 unless the paperwork was correct.

22 Q Well, we've heard testimony that they funded  
23 three deals and a fourth deal that the  
24 paperwork was wrong because you put a forgery  
25 on there, correct?

1 A Yes, sir.

2 Q Okay. Now, I want to show you what's been  
3 marked as Defendant's Exhibit F. See the name  
4 Robert McAllister up there?

5 (Whereupon, Defendant Sunshine's  
6 Exhibit F was marked for  
7 identification.)

8 A Yes, sir.

9 Q See the name 2/19 -- date 2/19/03, don't you?

10 A Yes, sir.

11 Q And this was sent in to Union by you. This is  
12 the document you were talking about, correct?

13 A Credit application, yes, sir.

14 Q And this application that got sent in was a  
15 document that Union Planters said that they  
16 approved his credit back in February of '03?

17 A Yes, sir.

18 Q Okay. And you knew that when you sent the  
19 fraudulent, false forgery in Defendant's  
20 Exhibit G, didn't you?

21 (Whereupon, Defendant Sunshine's  
22 Exhibit G was marked for  
23 identification.)

24 A Yes, sir.

25 Q And again, here's Defendant's Exhibit H which

1 is supposed to be the title application, isn't  
2 it?

3 A Yes, sir.

4 (Whereupon, Defendant Sunshine's  
5 Exhibit H was marked for  
6 identification.)

7 MR. SHIRLEY: We offer these as  
8 Defendant's Exhibits, Your Honor.

9 MR. SMITH: We have no objection,  
10 Your Honor.

11 THE COURT: They'll be admitted.

12 (Whereupon, Defendant Sunshine's  
13 Exhibits B through H were  
14 admitted into evidence.)

15 BY MR. SHIRLEY:

16 Q You see that before you here are the exhibits  
17 that you were asked about in your direct  
18 testimony?

19 A Yes, sir.

20 Q And you see this document, Exhibit 7. You've  
21 been asked to look at things and you've been  
22 asked to identify things, have you not?

23 A Yes, sir.

24 Q And inside this exhibit -- let me ask you this.  
25 I have not looked all the way through the

1 exhibit, and I'm not sure that Exhibit 7 is the  
2 same -- includes the exact same exhibits that  
3 were produced in discovery in this case by the  
4 lawyers to the other lawyers. I don't know if  
5 that makes any sense to you. I'm trying to  
6 explain to you what I'm talking about, okay?

7 A Yes, sir.

8 Q And Union Exhibit 7 that was produced to me  
9 shows page 2 and 3 that's on this exhibit.  
10 It's a Union Planters document, is it not?

11 A Yes, sir.

12 Q And you see I marked it Defendant's Exhibit J?

13 A Yes, sir.

14 (Whereupon, Defendant Sunshine's  
15 Exhibit J was marked for  
16 identification.)

17 BY MR. SHIRLEY:

18 Q And of course you know Dale York, yes?

19 A Yes, sir.

20 Q And you know Jon Williams, yes?

21 A Yes, sir.

22 Q And December 9, 2003, you were still working  
23 with Sunshine, were you not?

24 A Yes, sir.

25 Q Did you, in fact, receive this document, the

1 original of this document or a facsimile or a  
2 true copy of this document?

3 A Yes, sir.

4 Q Okay. And that document, sir, means in  
5 December of 2003, they were notifying you that  
6 they did not have the titles to the loans for  
7 the documentation that this paper reflects,  
8 isn't it?

9 A Yes, sir.

10 Q And of course -- I'm sorry, I hadn't noticed  
11 how clear your voice is over here by this  
12 speaker. Maybe I should stand over here. And  
13 the reason they didn't have that is because  
14 you -- there was none in existence, was there?

15 A No, sir.

16 Q And so let me make certain that I understand.  
17 You agree with me that what you did, Jon  
18 Williams did to Union Planters to get almost  
19 \$90,000, that's a criminal act, isn't it?

20 MR. SMITH: Judge, we object. That  
21 calls for a legal conclusion.

22 THE COURT: I sustain.

23 BY MR. SHIRLEY:

24 Q Do you believe you were breaking the law, sir,  
25 when you falsely signed somebody's name to a



1 document and represented to Union Planters that  
2 you were asking them to send you money?

3 MR. SMITH: And, Your Honor, we again  
4 object as that's a legal conclusion.

5 THE COURT: I overrule as to what he  
6 believed he was doing. You may answer the  
7 question.

8 A Yes, sir.

9 Q Yes, sir, I did, too. And so you and I agree  
10 with that. That, you can call it a bunch of  
11 fancy things but it was theft, wasn't it, sir?

12 A Yes, sir.

13 Q Okay. And the theft occurred with the signing  
14 of those documents that have been put into  
15 evidence, the documents that have the names of  
16 Hubert Lawson and Dorothy Peters that are your  
17 relatives?

18 A Yes, sir.

19 Q And then Robert McAllister, who's been referred  
20 to as Bob McAllister, is he kin to you?

21 A No, sir.

22 Q Now, we learned about and we saw where you had  
23 done an earlier one with Hubert Lawson, right?

24 A Yes, sir.

25 Q Okay. But today you are a defendant in this

1 case, are you not?

2 A Yes, sir.

3 Q And you are being sued by Regions in regards to  
4 this money for your misconduct; is that right?

5 A Yes, sir.

6 Q And you agree it's misconduct, don't you?

7 A Yes, sir.

8 Q And you agree you owe the money, don't you?

9 A Yes, sir.

10 Q Now, it is correct, isn't it, sir, that there's  
11 never been an occasion -- I'm gonna start over  
12 if I may, forgive me. Do you recall the last  
13 day you worked or were an employee with  
14 Sunshine Camping?

15 A Some of it, yes, sir.

16 Q Do you know the calendar day?

17 A Not off the top of my head, no, sir.

18 Q Well, Defendant's Exhibit J --

19 MR. SHIRLEY: Which we offer into  
20 record, if we have not, Your Honor.

21 (Whereupon, Defendant Sunshine's  
22 Exhibit J was admitted into  
23 evidence.)

24 MR. SMITH: Is that pages 2 and 3,  
25 Mr. Shirley?

1 MR. SHIRLEY: It is. It's not on the  
2 copy but I'll be glad --

3 MR. SMITH: No, I've got a copy.  
4 That's fine.

5 MR. SHIRLEY: But I believe that it  
6 is.

7 MR. SMITH: We have no objection to  
8 that coming into evidence, Your Honor.  
9 It's exactly what we produced.

10 THE COURT: It will be admitted.

11 MR. SHIRLEY: By way of  
12 qualification, I don't think they were  
13 saying ... I just didn't realize the copy  
14 page, the number of the page is down at  
15 the very bottom on some of the legal  
16 pages, but it didn't come through.

17 BY MR. SHIRLEY:

18 Q That document says December 9, 2003. So you  
19 were working there then, were you not?

20 A Yes, sir.

21 Q And for the months and days and weeks leading  
22 up to the end of the calendar year of 2003, not  
23 only had you received notification to get us a  
24 title, get the paperwork in, send the paperwork  
25 up there, this thing had been going on, these

1           indebtednesses that occurred, these frauds that  
2           you perpetuated had been in existence for a  
3           good period of time?

4 | A Yes, sir.

5 Q And I'm asking you to think about February  
6 2004. Is that when you were fired?

7 A I think it was at the end of January.

8 | 0 Could have been like the last week in January?

9 | A Yes, sir.

10 Q Okay. And at the time that you were fired  
11 Comber Borland told you to leave the premises  
12 because he discovered that you had yet again --

13 MR. SMITH: Your Honor, we object as  
14 to what he may have been told by Comber  
15 Borland. That's very clearly hearsay.

16 MR. SHIRLEY: Well --

17 MR. SMITH: Mr. Borland is not a  
18 party, as Mr. Shirley's pointed out. The  
19 corporation's a party. So we object,  
20 that's hearsay.

21 MR. SHIRLEY: Well, I thought that he  
22 had established in direct testimony that  
23 Mr. Borland, who has been advised to the  
24 Court as the representative of Sunshine,  
25 who has been questioned and asked about

1 his duties and his responsibilities and  
2 what his capacity was and even asked about  
3 this if he was fired and discharged by  
4 Comber Borland, I don't see what the  
5 mystery is.

6 MR. SMITH: Your Honor, it's not the  
7 act. It's what may have been told at the  
8 time. I think that's something Mr.  
9 Borland will have to testify to.

10 THE COURT: I'm gonna sustain the  
11 objection.

12 BY MR. SHIRLEY:

13 Q All right, sir. Well, let me ask it this way.  
14 Did the police come up there and escort you  
15 out?

16 A Yes, sir.

17 Q Why?

18 A I don't know.

19 Q Because Comber Borland called them, didn't he?

20 A Yes, sir.

21 Q Called them in your presence, yes?

22 A He didn't call them in my presence, no.

23 Q All right. Well, you knew on that day that  
24 Comber Borland would not tolerate stealing  
25 money from Sunshine. You knew that, didn't

1           you?

2           A       Yes, sir.

3           Q       And you knew all those days leading up to the  
4                   last days of January 2004 that Comber Borland  
5                   would not tolerate stealing money from Union  
6                   Planters. You knew that, didn't you?

7                   MR. SMITH: Objection as to what  
8                   Comber Borland knew. I may have  
9                   misunderstood the question, Your Honor.

10                  THE COURT: He's saying he knew that  
11                  Comber Borland wouldn't tolerate that.

12                  MR. SMITH: I'm sorry, no objection.

13          A       Yes.

14          Q       Yes? Speak up, sir, yes?

15          A       Yes.

16          Q       Now, you're not gonna try to tell me, sir, that  
17                   when you signed those documents that have been  
18                   introduced into evidence that you were working  
19                   for Sunshine Camping company and that was part  
20                   of your job, are you?

21          A       No, sir.

22          Q       Say again?

23          A       No, sir.

24          Q       And is that because you were in the scheme of  
25                   stealing money from somebody?

1 A Wasn't in a scheme, no, sir.

2 Q You don't call this a scheme, getting this  
3 money?

4 A I was having problems.

5 Q Yes, sir. We're gonna get to that in just a  
6 minute. But you agree with me --

7 A Yes, sir.

8 Q And of course you played up to Dale York  
9 because y'all had known each other, didn't you?

10 A Play up to him? No, sir.

11 Q Well, you knew you were supposed to give  
12 complete information, fill out that form  
13 completely, and you didn't do that, did you?

14 A No, sir.

15 Q In fact, you'd call him on the phone and say,  
16 Hey, Dale, this is your ol' pal, send me some  
17 money, take this loan; is that the way it went?

18 A No, sir.

19 Q It didn't? Well, sir, you just told us that  
20 this exhibit -- I think it's Defendant's  
21 Exhibit F -- it wasn't even signed by Mr.  
22 McAllister, and you said he approved it without  
23 it even being signed. Yes?

24 A Yes, sir.

25 Q Yes, sir. That's not the procedures, is it?

1 A No, sir.

2 Q Now, sir. You are a convicted felon, are you  
3 not, sir?

4 A No, sir.

5 MR. MATTHEWS: Your Honor, I'm gonna  
6 object to that.

7 MR. SHIRLEY: Well --

8 THE COURT: I overrule the objection.  
9 I think he can be asked and answer.

10 BY MR. SHIRLEY:

11 Q Well, did you not plead guilty to four offenses  
12 of theft that were somehow related to Sunshine  
13 Camping company? You didn't do that?

14 MR. MATTHEWS: Your Honor, I object  
15 and I'd like to make a motion outside the  
16 presence of the jury.

17 THE COURT: Okay. I'm going to  
18 excuse the jury at this time for us to  
19 take up this motion. So y'all may go back  
20 to the jury room, please.

21 (The jury left the courtroom.)

22 MR. MATTHEWS: Your Honor, I object  
23 to this line of questioning. I would ask  
24 that a motion in limine be placed against  
25 Mr. Shirley. He knows, and I've been up



1 front with them, that my client got  
2 pretrial diversion. He entered a  
3 conditional guilty plea that does not come  
4 into effect unless he does something  
5 against the pretrial agreement we made  
6 with the district attorney's office. He  
7 has not been convicted of a felony and  
8 Mr. Shirley knows that. He's trying to  
9 somehow get these matters before this  
10 Court. They're not germane to this issue.  
11 They don't have anything to do with the  
12 case that you're hearing.

13 MR. SHIRLEY: Well --

14 MR. MATTHEWS: And he knows that.

15 MR. SHIRLEY: All I --

16 MR. MATTHEWS: That's why I make the  
17 motion.

18 MR. SHIRLEY: All I can say to you, I  
19 just pulled out one case action summary  
20 from the circuit court of Geneva County.  
21 And on the 20th day of May, 2005, the case  
22 action summary -- and it's typed, which I  
23 understand to be the customary form --  
24 that says that he pleads guilty and  
25 adjudicated guilty and sentence is

1 withheld and he's placed on pretrial  
2 diversion administrative document.  
3 Administrative docket is what I should  
4 say. But I submit, and that's why I asked  
5 him that question, that these matters  
6 arise from an indictment for which, as he  
7 now testifies, he has pled guilty to the  
8 charge in this indictment. Count one  
9 theft by deception; count two, theft by  
10 deception; and possession of a forged,  
11 second degree. Plea bargain agreement  
12 dated May 16, 2005. I think the others  
13 are in the same representative form. And  
14 whatever the Court rules would seem to me  
15 would be the same.

16 MR. MATTHEWS: Judge, one thing that  
17 should be noted, he has not been  
18 adjudicated guilty.

19 THE COURT: Well, if he read the  
20 order correctly that's what it said.

21 MR. SHIRLEY: Yes, sir. It says --

22 MR. MATTHEWS: And he's not been  
23 convicted of a felony.

24 THE COURT: Well, what I'm going to  
25 do, I'm gonna have to allow it. I mean,

1           you can explain the circumstances if you  
2           want to as far as the deferred prosecution  
3           or however you want to deal with it, but  
4           the Court's entry indicates an  
5           adjudication of guilt. And if that's the  
6           case it's gonna have to be allowed.

7           MR. SHIRLEY: Now, I would like to  
8           say that -- and I'm trying to do this  
9           outside the presence of the jury, so if I  
10          say it wrong I'm not trying to say it  
11          wrong. But it's my belief there are two  
12          cases in Dale County, two cases in Coffee  
13          County, and a case in Geneva County where  
14          he entered pleas of guilty. And the case  
15          action summaries indicated that he was  
16          adjudicated guilty for which I understand  
17          the adjudication can be withdrawn or  
18          whatever the case may be if he  
19          successfully accomplishes everything.

20          THE COURT: That's right.

21          MR. SHIRLEY: But insofar as the  
22          record is concerned, that's the way that I  
23          understand it.

24          THE COURT: Are these other  
25          situations just like the ones we're

1                   trying?

2                   MR. SHIRLEY: Well, he --

3                   THE COURT: Or similar?

4                   MR. SHIRLEY: Yeah -- well, and I  
5                   don't know that I have them reduced to  
6                   memory. I would make the proffering to  
7                   the Court this: That there was a title on  
8                   a piece of recreational vehicle from  
9                   Sunshine Camping that was carried to the  
10                  Hartford Bank in Geneva County, Alabama,  
11                  and \$10,000 was received from it. And  
12                  that the forged instrument was the title  
13                  that said he owned it when it should have  
14                  been the title in the vehicle ownership of  
15                  Mr. and Ms. Owens. That concerns Sunshine  
16                  Camping because the MSO came to them from  
17                  their work, from their business. It came  
18                  in, he took the title and the application.

19                  THE COURT: Let me ask this. What's  
20                  the purpose of the question?

21                  MR. SHIRLEY: Well, the purpose of  
22                  the question is that if in fact he has a  
23                  felony conviction and if in fact he has a  
24                  felony conviction wherein he admits or is  
25                  found guilty of conduct procuring property

1 or property values which are through false  
2 pretense or false pretenses or scheme, it  
3 would be relevant to prove both you can  
4 impeach by the commission of a felony and  
5 you can impeach further by the conviction  
6 of a felony involving theft or crimes of  
7 false pretense. And it would be offered  
8 for that purposes.

9 It would also be offered to prove  
10 that he's not trying to claim that he was  
11 working for Sunshine when he took that  
12 title down there that he stole out, which  
13 would be an inference that the rest of the  
14 time he hadn't been working for them  
15 arising out of the scope of employment.

16 MR. SMITH: Your Honor, we would say  
17 on behalf of Regions Bank in this case  
18 that Mr. Shirley may be correct to the  
19 extent that he can impeach the witness  
20 based on a felony conviction if indeed  
21 that's what's occurred. But the facts and  
22 circumstances past that are simply  
23 irrelevant and immaterial and highly  
24 prejudicial, and we do object to anything  
25 past the fact you've been convicted of a

1 felony or felonies, period.

2 THE COURT: Anything further?

3 MR. MATTHEWS: Judge, I think this is  
4 totally wrong. He has not been convicted  
5 of a felony. If he's convicted of a  
6 felony the appeal time starts running.  
7 He's sentenced and he's got an option to  
8 appeal. It's not a final judgment. And  
9 for the Court to allow him to call this a  
10 final judgment, that's not -- that's not  
11 right. He's not a convicted felon. As a  
12 matter of fact, when he complete pretrial  
13 the cases will be dismissed. I mean, it's  
14 not a final -- you know. That's just my  
15 argument.

16 THE COURT: I believe you're correct.  
17 I believe if there's -- sentencing hadn't  
18 occurred, then I don't believe he's got a  
19 conviction.

20 MR. MATTHEWS: Basically --

21 THE COURT: I'm gonna sustain the  
22 objection and I'm going to disallow the  
23 question.

24 MR. MATTHEWS: Thank you, Judge.

25 (Pause in the Proceedings.)

1 MR. SHIRLEY: I need to make a  
2 statement in the record.

3 MR. SMITH: Okay.

4 MR. SHIRLEY: I am asking the Court  
5 to allow me at some more convenient time  
6 to make a proffer of all of those so the  
7 record would reflect what the documents  
8 indicate about the disposition of the  
9 different cases that form the foundation  
10 for asking the questions that I did.

11 MR. SMITH: And we don't object to  
12 that -- at least Regions doesn't object to  
13 that being out of order, Your Honor.

14 THE COURT: All right. Okay.  
15 Anything further that we can address with  
16 regard to this issue before we bring the  
17 jury back in?

18 MR. MATTHEWS: Judge, I just want --  
19 I don't know if I need a curative  
20 instruction or not from the Court. Mr.  
21 Williams denied being convicted of a  
22 felony, I think twice.

23 THE COURT: Okay.

24 MR. MATTHEWS: And I think that  
25 might --

1 THE COURT: Well, that being the  
2 case --

3 MR. SHIRLEY: He has not been  
4 impeached. What you gonna cure?

5 MR. MATTHEWS: That's what I'm  
6 saying. I don't think there's a reason to  
7 do that.

8 THE COURT: Okay.

9 (The jury entered the  
10 courtroom.)

11 THE COURT: You may proceed,  
12 Mr. Shirley.

13 BY MR. SHIRLEY:

14 Q Let me direct your thinking to the timeframe of  
15 late January, February 2004. Was this in the  
16 middle of the day that you were escorted out by  
17 the police there at Sunshine Camping?

18 A I believe so.

19 Q Mr. Borland was the president of Sunshine  
20 Camping on that occasion?

21 A Yes, sir.

22 Q Was he in charge of the premises and the  
23 business on that day so far as you understand?

24 A Yes, sir.

25 Q And on that occasion did you see or did you